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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 276.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ROBERT N. SMITH, ELIZABETH A. SMITH, WIFE OF MARINE DUVALL; ELIZABETH W. SMITH, WILLIAM L. SMITH, AND JOHN S. SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED DECEMBER 13, 1886.

accession 28928

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a United States Circuit Court, Fifth Circuit and Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEORGE A. TURNER *et als.*
No. 80.

A. H. Leonard & Land & Land, for plaintiffs; Wise & Herndon, for defendants.

1 *Petition.*

To the honorable the judges of the circuit court of the United States, fifth circuit and western district of Louisiana, at the city of Shreveport:

The petition of Robert N. Smith and of Elizabeth A. Smith, wife of Marine Duvall, herein joined, authorized, and assisted by her husband, and of William L. Smith and of Elizabeth W. Smith, widow of the late James F. Smith, deceased, all residents of Shelby Co., State of Kentucky, and citizens of Kentucky, and of John S. Smith, a resident of Denver, Colorado, and a citizen of Colorado, with respect represents that they are the legal heirs of William W. Smith, deceased, late of the parish of Caddo and State of Louisiana, and as such have succeeded to all of his property, rights, and credits in said State.

Your petitioners now represent and show to the court that the State of La., through its constituted authorities, did sell to the said W. W. Smith, on the 14th day of May, 1853, a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the said parish of Caddo, containing an area of 186.57 acres, at the maximum price of $1.25 per acre, which at the time was paid into the treasury of the State by the said W. W. Smith, as fully appears and is shown by the certificate of sale, hereunto annexed and made part of this petition for greater certainty.

Your petitioners further represent and show to the court that after said sale the State of Louisiana, through its constituted authori-
2 ties, did, on the 24th day of February, 1855, issue a patent to [for] said tract of land to the said W. W. Smith, as fully appears and is shown by said patent, hereunto annexed and made a part of this petition for greater certainty.

They further represent and show to the court that the State of La. claimed and acquired said tract of land as swamp and overflowed land granted to the State by the acts of Congress of 1849 & 1850, and that the State sold said land to the said W. W. Smith as swamp and overflowed land.

Your petitioners further represent and show to the court that all sales of land in Louisiana claimed as swamp and overflowed lands by the State, whether made by the United States Government or by the State Government in La. and whether the land sold was of that character or not, were confirmed by the act of Congress, approved

March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

They further represent that said act of March 2nd, 1855, was extended to sales made after its passage and continued in force by the act of Congress of March 3rd, 1857, to confirm all selections of swamp and overflowed lands by the several States under the acts of Congress of 1849 & 1850.

Your petitioners now aver that the said act of Congress of March 2nd, 1855, for the relief of purchasers and locators of swamp
3 and overflowed lands, confirmed the title of the said W. W. Smith to said tract of land known as Silver Lake, whether said land belonged to the State of La. under the swamp-land grants of Congress or whether it belonged to the United States.

Your petitioners further aver that the said W. W. Smith acquired a title to said land both from the State of La. and the United States, by purchase from the State and by confirmation of act of Congress, and that said title is paramount *is paramount* to all subsequent claims from the Government, and is indefeasible under the act of confirmation of the 2nd of March, 1855.

They further represent and aver that they are the just, true, and legal owners of the tract of land known as Silver Lake, which is illegally withheld from them and a part of which, containing 40 acres or more, is in the unlawful possession of one Geo. A. Turner, of the said parish of Caddo and State of La. and a citizen of said State, who refuses to deliver the said part of said land to your petitioners after amicable demand, as will be fully shown on the trial of this suit.

Your petitioners aver that said part of said land in the possession of the said Geo. A. Turner is worth at least six hundred dollars.

4 They further aver that your hon. court has jurisdiction over case herein presented.

Wherefore your petitioners pray for citation to the said George A. Turner and, after due and legal proceedings had, for judgment for the recovery of said tract of land in the possession of the said George A. Turner as aforesaid, with its — and revenues from judicial demand.

The- further pray for all orders, decrees, and writs necessary in premises, for cost-, and general relief.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Petitioners.

(Endorsement:) No. 80. U. S. circuit court, western district of La. Robert N. Smith *et als. vs.* George A. Turner. Petition. I am security for costs. (Sig.) Leon M. Carter. Nov. 5, '85. Filed Nov. 6th, '85. (Sig.) J. W. Wheaton, cl'k. A. H. Leonard, Land & Land, att'ys.

5 *Citation.*

UNITED STATES OF AMERICA,
Western District of Louisiana:

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

ROBERT N. SMITH *et als.*
versus
GEORGE A. TURNER. } No. 80.

The President of the United States to George A. Turner:

You are her-by summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and — district of Louisiana, in the city of Shreveport, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from the city of Shreveport, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, this 6th day of November, A. D. one thousand
6 eight hundred and eighty-five, and of the Independence of the United States of America the 109th year.

[Seal U. S. Circuit Court for the Western Dist. of La.]

Teste: (Sig.) J. W. WHEATON, *Clerk.*

Marshal's Return.

Rec'd in office Nov. 7th, 1885, and on the same day, month, and year I served a certified copy of the within citation and petition thereto attached — Geo. A. Turner, def't, in person, in the city of Shreveport, La.

(Sig.) J. C. JONES,
Dep'ty Marshal.

(Endorsement:) No. 80. U. S. circuit court, fifth circuit, — district of Louisiana. Robert N. Smith *et als. versus* George A. Turner. Copy of petition and citation inside, to be served on —— ——. Marshal's return. Filed Dec'r 1, '85. (Sig.) J. W. Wheaton, clerk.

7 *Answer.*

U. S. — Court, Western Dist. of La.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. 80.

Now comes Geo. A. Turner, defendant in this suit, and for answer

to plaintiffs' petition alleges that — in *his* possession of a portion of the property described in petition as a tenant of the Vicksburg, Shreveport & Pacific Railroad Company, whose domicil is at Monroe, Ouachita parish, La., and of which F. S. Bond is president, and prays that his said lessor and the owner of said property be made defendant herein and respondent be discharged.

(Sig.) WISE & HERNDON, *Att'ys.*

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Answer. Filed Feb'y 22, '86. (Sig.) J. W. Wheaton, cl'k.

8 *Extract of Minutes of U. S. Circuit Court.*

TUESDAY, *February* 23*rd*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

Order Substituting V., S. & Pacific R. R. as D'f'ts in Place of Geo. A. Turner.

R. N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. 80.

Ordered, That the Vicksburg, Shreveport & Pacific Railroad Company, of which F. S. Bond is president, be made defendants in the place of G. A. Turner, respondent herein.

Citation.

THE UNITED STATES OF AMERICA,
Western District of Louisiana:

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. 80.

To the Vicksburg, Shreveport and Pacific Railroad Company:

You are hereby summoned to comply with the demand contained in the petition & answer, of which a copy accompanies this
9 citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, this 25th day of February, A. D. one thousand eight hundred and eighty-six, and of the Independence of the United States of America the 110th year.

[Seal U. S. Circuit Court for the Western Dist. of La.]

Teste: J. W. WHEATON, *Clerk.*
E. J. NOLAN, *D'y Cl'k.*

Endorsement: No. 80. United States circuit court, fifth
10 circuit, western district of Louisiana. Robert N. Smith *vs.* Geo. A. Turner. Copy of petition and citation inside, to be served on —— ——. Filed March 6th, 1886. E. J. Nolan, d'y clerk.

Marshal's Return.

Rec'd in office Feb'y 25th, 1886, & on the 4th day of March, same year, I proceeded to Monroe, La., and after diligent inquiry I failed to find any one upon whom service could be made, after which I returned to Shreveport, and on the 6th day of said *of said* month & year I succeeded in finding F. S. Bond, president of the V., S. & P. R. R., and did, on that day, serve a certified copy of the within citation and copy — petition and copy of answer thereto attached by leaving same in his hand. This done in the city of Shreveport, La.

(Sig.) P. B. WEAKS, *D'y Mar.*

11 *Interrogatories.*

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH *et als.* *vs.* GEO. A. TURNER *et als.* } No. 80.

Interrogatories propounded to James L. Lobdell, of the parish of East Baton Rouge, a material and competent witness on behalf of defendants in this case, whose answers will be used in evidence on trial thereof.

1st. What official position do you fill in the State of La.?

2nd. If register, please state whether you have in your custody the books, records, &c., relating to public lands belonging to the State, including such as have already been disposed of.

3rd. Please examine the records in your office and state whether or not they show a selection by the State of La., as swamp and overflowed land, — a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the parish of Caddo, containing an area of 186.57 acres. If yea, state when and how the selection was made.

12 4th. Please state whether or not the records show said land was ever included in any list of lands certified from the Land Department of the U. S. Gov't at Washington city as swamp and overflowed lands donated to the State of La. by acts of 1849 & 1850.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

All legal objections as to competency & admissibility reserved, cross-examination waived, and we consent that a commission may issue to — the answers of above-named witnesses.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Pl'ffs.

July 10, '86.

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Interrogatories. Filed July 12th, '86. E. J. Nolan, d'y clerk.

13 *Copy of Commission Issued.*

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

To clerk of district court of the parish of East Baton Rouge, La.:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you James L. Lobdell, of parish of East Baton Rouge, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Robert N. Smith *et als.* are plaintiffs and Geo. A. Turner *et als.* defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

14 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Shreveport, this 12th day of July, anno Domini 1886, and the 111th year of the Independence of the United States of America.

J. W. WHEATON, *Clerk*,
Per E. J. NOLAN, *D'y Clerk.*

(Endorsement:) United States circuit court. No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner *et als.* Commission.

Copy of Interrogatories.

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER *et als.* } No. 80.

Interrogatories propounded to James L. Lobdell, of the parish of East Baton Rouge, a material and competent witness on behalf of defendants in this case, whose answers will be used in evidence on trial thereof.

1st. What official position do you fill in the State of La.?

2nd. If register, please state whether you have in your custody the books, records, &c., relating to public lands belonging to the State, including such as have already been disposed of.

3rd. Please examine the records in your office and state whether or not they show a selection by the State of La., as swamp and overflowed land, — a certain tract of land known as Silver Lake, situated in section 31, township 18, ranges 13 & 14, in the parish of Caddo, containing an area of 156.57 acres. If yea, state when and how the selection was made.

4th. Please state whether or not the records show said land was ever included in any list of lands certified from the Land Department of the U. S. Gov't, at Washington city, as swamp and overflowed lands donated to the State of La. by acts of 1849 & 1850.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

All legal objections as to competency & admissibility reserved, cross-examin-tion waived, and we consent that a commission may issue to take the answers of above-named witnesses.

(Sig.) A. H. LEONARD,
" LAND & LAND,
Att'ys for Pl't'ffs.

July 10, '86.

Filed July 12th, 1886.

E. J. NOLAN, *D'y Clerk.*

A true copy.
Attest: E. J. NOLAN, *D'y Clerk.*

(Endorsement:) No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Copy of interrogatories.

Answers to Interrogatories.

STATE OF LOUISIANA, *Parish of East Baton Rouge:*

CLERK'S OFFICE.

Be it known that on the fifteenth day of July, A. D. one thousand eight hundred and eighty-six (1886), by virtue of a commis-
17 sion directed to the clerk & recorder of said parish and State from the hon. circuit court of the United States for the western district of Louisiana, personally came and appeared Hon. James L. Lobdell, register of the land office of the State of Louisiana, which said office is domiciliated at the State capital, in the city of Baton Rouge, who, after having been by me duly sworn according to law, deposes as follows in answer to interrogatories propounded to him in suit of Robert N. Smith *et als. vs.* George A. Turner *et als.*, No. 80, circuit court of the United States for the western district of Louisiana, said answers to be used in evidence on the trial of above-mentioned suit, to wit:

Answer to interrogatory 1st. I am the register of the State land office.

Answer to interrogatory 2d. I have in my custody the books, records, &c., relating to public lands belonging to the State of La., including such as have already been disposed of.

Answer to interrogatory third (3d). The records of this office do not show that section 31, T. 18, range- 13 and 14 west, N. W. district, were ever selected as swamp land.

18 Answer to interrogatory 4th. There is nothing to show that said land was ever included in any list of lands certified from the Land Department of the United States Government, at Washington city, as swamp and overflowed lands donated to the State of Louisiana by acts of 1849 and 1850.

(Sig.) JAMES L. LOBDELL, *Register.*

Sworn and subscribed to before me on this 15th day of June, A. D. 1886.

(Sig.) CHAS. BERGERON, *D'y Cl'k.*

I, Charles Bergeron, deputy clerk and recorder, duly qualified, in and for the parish of East Baton Rouge, State of Louisiana, do hereby certify that the above and foregoing are true and corrects answers to interrogatories herein propounded by def'ts to Hon. James L. Lobdell, State register of land office at this place, as taken down by me under commission of date July 12th, A. D. 1886, and directed to the cl'k of the 17th judicial district court of the parish of East Baton Rouge, State of Louisiana.

In witness whereof I hereunto subscribe my hand and affix the seal of our said court this 15th day of July, A. D. 1886.

(Sig.) CHAS. BERGERON, *D'y Cl'k.*

19 Endorsed: No. 80. U. S. C. C. Robert N. Smith *et als. vs.* Geo. A. Turner. Answers to interrogatories. Filed July 17th, 1886. E. J. Nolan, d'y cl'k.

Exception.

In Circuit Court of the United States for the Western Dist. of La.

ROBERT N. SMITH *et als.* vs. GEO. A. TURNER *et als.* } No. 80.

Now come defendants and specially deny that plaintiffs are the legal heirs of W. W. Smith, deceased, and, if heirs, deny that they are his sole heirs.

Therefore except to their capacity to *to* sue and stand in judgement.

(Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Att'ys for Defendants.

20 (Endorsed:) Robert N. Smith *et als. vs.* Geo. A. Turner *et als.* Exception. Filed July 20th, 1886. (Sig.) J. B. Beattie, d'y cl'k.

21 & 22 *Extract of Minutes of U. S. Circuit Court.*

WEDNESDAY, *July 21st*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et als.* vs. GEO. A. TURNER *et als.* } Jury Waiver on Trial of Exception Filed Herein.

Exception taken up, tried, and same overruled; exception & plea of *res adjudicata* filed and same assigned for trial on Saturday, July 24th, 1886.

Exception & Plea of Res Adjudicata.

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH *et als.* vs. GEO. A. TURNER *et als.* } No. 80.

Now comes the Vicksburg, Shreveport and Pacific Railroad Company, made party defendants herein, and, without answering to the merits of this case, file this their plea and exception of *res adjudicata* to plaintiffs' action on the following grounds, to wit: That in a suit entitled The State of Louisiana *vs.* W. W. Smith, No. — on the docket of the district court of Caddo parish, La., filed ——,
23 1857, defendant put at issue the validity and legality of his title to the land described in plaintiffs' petition — under and

by virtue of the certificate and patent described in said petition, and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same, & ordering them to be delivered to the State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy of pleadings, evidence, and judgment in said suit hereto annexed and made part hereof.

That plaintiffs in this suit, the heirs of W. W. Smith, are bound by the judgment in said suit, which is to them *res adjudicata;* and defendants therefore pray that their suit may be dismissed.

(Sig.) FRANK P. STUBBS, *Counsel.*
" W. H. WISE,
Att'y V., S. & P. R. R.

(Endorsed:) 80. Rob't N. Smith *et als. vs.* Geo. A. Turner *et als.* Exception & plea of *res adjudicata.* Filed July 21st, 1886. (Sig.) J. B. Beattie, d'y cl'k.

24 *Document Filed in Evidence.*

To the hon. the judge of the 10th judi-al district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, tutor of Robert N. Smith and John L. Smith, minor children of Jno. K. Smith, dec'd, late of the State of Kentucky, and Wm. L. Smith & Elizabeth A. Duvall, wife — M. Duvall, authorized and assisted by her said husband, all of the State of Kentucky, with respect represents that as the children, the legal heirs, and representatives of the said Jno. K. Smith, dec'd, who was the brother of the late Wm. W. Smith, dec'd, — which was opened in the parish of Caddo; that James F. Smith, of the county of Shelby, State of Kentucky, now present in the parish of Caddo, owns the other half; that said succession was administered by Jno. W. Smith, and that the said Jno. W. Smith, adm'r as aforesaid, has filed his final account, as appears by mortuary proceedings in succession of said Wm. W. Smith, dec'd.

Petitioners represent that they wish a partition of all of the assets belonging to said succession between themselves and the said James F. Smith; that said partition can be made in kind.

The premises considered, petitioners pray that the said James F. Smith be cited to answer this petition; that a commission issue
25 for inventory and appraisement of property and assets of succession to serve as basis of partition, and that a commission issue to some duly qualified notary public to make partition of said assets, and prays for all orders and decrees necessary & for general relief.

(Sig.) NUTT & LEONARD.

I accept service of foregoing petition, waive citation & time, & consent to the partition.

(Sig.) JAMES F. SMITH.

District Court, Caddo Parish.

JOHN BROWN, Tutor, *et al.*
vs.
JAMES F. SMITH. } No. —.

In this case, by reason of the law and evidence, it is ordered, adjudged, and decreed that the prayer of within petition be granted, and that there be a partition in kind of all the property belonging to succession of W. W. Smith, deceased, between the plaintiffs and defendant, plaintiffs to have one-half. It is further ordered that a commission issue to C. W. Lewis, recorder & *ex officio* notary public of said parish, directing him to take an inventory and appraisement of said property and to make a partition in kind of said property, and that Jno. W. Smith and Jos. B. Smith be appointed ex-
26 perts to assist said notary in making said partition.

Done and signed, at office, this January 7th, A. D. 1868.

(Sig.) R. J. WRIGHT, *Clerk.*

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith. Pet'n for partition. Filed January 7th, 1868. (Sig.) S. C. Wright, dep. clerk.

To the hon'l- the judge of the 10th judicial district of the State of La., holding sessions of court in and for the parish of Caddo:

The petition of John Brown, tutor of Robert N. Smith & John L. Smith, minor children of John K. Smith, deceased, late of the State of Kentucky, and of Wm. L. Smith & Elizabeth A. Smith, wife of M. Duvall, authorized and assisted by her said husband, all residents of the State of Kentucky, with respect represents that they recently, viz., on 7th day of January, 1868, instituted suit in your hon'bl- court against Jas. F. Smith, and in said suit a decree was rendered directing a partition of all the property belonging to succession of W. W. Smith, dec'd, formerly of said parish of Caddo, between petitioners and said Jas. F. Smith, who are the heirs of said W. W. Smith; all of which will appear by reference to record in said suit No. 7779 on your honor's docket.

27 Petitioners represent that in accordance with said decree a partition has been regularly made by C. W. Lewis, recorder & *ex officio* notary public of said parish, a *procès-verbal* of which is herewith presented.

Petitioners pray that said partition, so made, be homologated, approved, and made the judgment of the court, and that the petitioners be declared the owners of the property therein allotted to them, and that said Jas. F. Smith be declared owner of the property therein allotted to him.

They ask that said James F. Smith, of the State of Kentucky, now in the parish of Caddo, be cited to answer hereto, and that after all legal notices and delays judgment be rendered as prayed for above. They ask for all orders and decrees necessary in the premises and for general relief.

(Sig.) NUTT & LEONARD,
Att'ys for Petitioners.

I accept — of within petition, waive citation and time, and join in the prayer of said petition.

(Sig.) JAMES F. SMITH.

District Court.

JOHN BROWN, Tutor, *et al.* *vs.* JAS. F. SMITH. } No. 7779.

By reason of the law and evidence it is ordered, adjudged, and decreed that the prayer of within petition be granted, and
28 that the partition of the property belonging to the succession of W. W. Smith, dec'd, between the heirs thereof, made by C. W. Lewis, recorder and *ex officio* notary public, on the 13th day of January, A. D. 1868, a *procès-verbal* of which has been filed in office of clerk of district court of said parish, be, and the same is hereby, homologated, approved, and made the judgment of the court, and that the within-named petitioners, as children of J. K. Smith and heirs of said W. W. Smith, be, and are hereby, declared the owners of the property allotted to them in said partition, and that Jas. F. Smith be, and is hereby, declared owner of the property allotted to him in said partition.

It is further ordered and decreed that the costs of effecting partition be borne equally by said petitioners, heirs of J. K. Smith, and by said James F. Smith.

Done and signed in chambers on this the 13th day of January, A. D. 1868, in parish of Caddo.

(Sig.) JAS. J. WEEMS,
Judge 10th Jud'l Dist.

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith. Petition. Filed Jan'y 14th, 1868. (Sig.) R. J. Wright, clerk.

29 CLERK'S OFFICE, CADDO PARISH.

I hereby certify that the foregoing five pages contain true and correct copies of the original petition for and judgment decreeing partition; also petition for and judgment homologating said partition, as the same now appear on file and of record in my office.

Given under my hand and seal of office, at Shreveport, Louisiana, on this the 20th day of July, A. D. 1886.

[SEAL.] (Sig.) W. G. BONEY,
Deputy Clerk 1st Judicial Dist. of La.

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* James F. Smith. Petitions and judgments. 80. Exhibit "A." Copy. Filed July 21st, 1886. (Sig.) J. B. Beattie, d'y cl'k. Ordered that the court do now adjourn until Saturday, July 24th, 1886.

30 R. N. SMITH *vs.* GEO. A. TURNER. } No. 80. Case Assigned for Trial on Wednesday, July 28th, 1886.

SATURDAY, *July 24th*, 1886.

Ordered that court do now adjourn until Wednesday, July 28th, 1886.

Documents Filed in Evidence July 26th, '86.

In the Circuit — of the United States for the District of Louisiana.

HENRY R. JACKSON *et al.* *vs.* VICKSBURG, SHREVEPORT & TEXAS RAILROAD CO., NORTH Louisiana & Texas Railroad Co., and Other Defendants. } No. 5033.

Whereas the Vicksburg, Shreveport and Texas Railroad Company, a corporation of the State of Louisiana incorporated by an act approved the 28th day of April, 1853, and promulgated as act No. 228 of the session of the Legislature of that year, and in other acts of the General Assembly supplementary thereto and in furtherance of the object of the same, under the power and authority granted to the said company, did execute a mortgage bearing date the first day
31 of September, 1857, to secure the payment of a uniform series of two thousand first-mortgage bonds, payable to John Ray or bearer, each bearing even date with the mortgage and payable twenty years from date, with coupons for semi-annual interest, each being for the sum of forty dollars, or nine pounds sterling, and each bond for one thousand dollars, or two hundred and twenty-five pounds sterling; and the said corporation by the said mortgage did impose upon the property therein a first-mortgage lien in favor of the holders of said bonds and each of them for the payment of the principle and the interest of said bonds, which property consists of the entire railroad of the said company, extending from a point opposite to the city of Vicksburg, on the Mississippi river, to the boundary lines of the States of Louisiana and Texas, a distance of one hundred and ninety miles, more or less, by way of Monroe and Shreveport, then finished or to be completed, and all the rights of way, lands, property, franchises, rights, and appurtenances, water stations, warehouses, depots, depot grounds, structures, and improvements which have been or may be constructed thereon, and
32 all the engines, locomotives, wagons, machinery, utensils, and effects generally of every nature and description, or which may be placed upon or become attached to the same, without exception or reservation, and, under the head of lands, all the lands to be acquired by the company for any purpose, for right of way, depots, depot grounds, or for sale for profit as town lots or otherwise; and specially it was intended to include the lands, together with all of the rights of the company thereto, being some four hundred and twenty thousand nine hundred and twenty-four acres, more or less, donated by the Congress of the United States to the State of Louis-

iana by act approved the third day of June, 1856, and granted to this company to aid in the construction of the railroad aforesaid by acts of the General Assembly approved June third, 1856, and eleventh of March, 1857, which lands lie along the line of the railroad and contiguous thereto and within — miles of the railroad; and

Whereas the said Vicksburg, Shreveport and Texas Railroad Company did put in circulation to *bona fide* purchasers seven
33 hundred and sixty-one of the series of bonds aforesaid, and did, after the issue thereof, during the year 1864 and from thence till December, A. D. 1866, fail to pay the interest thereon to the holders of the said bonds, the suit of the title mentioned in the caption of this deed was commenced and has been prosecuted against the said Vicksburg, Shreveport and Texas Railroad Company, The North Louisiana and Texas Railroad Company, John S. Ludeling, John Ray, Francis P. Stubbs, Wesley J. Q. Baker, Henry M. Bry, Joseph F. McGuire, John A. McGuire, Robert Ray, Joseph P. Crossley, Charles W. Phillips, Robert C. Strother, Christopher H. Dabbs, George C. Waddell, and William M. Pinkard as defendants; and such proceedings were had in the said cause in the circuit court of the United States that a decree was rendered therein on the third day of July, 1879, now of record in said cause, wherein and whereby the validity of the mortgage aforesaid was fully established against each and all of the parties aforesaid and its obligation recognized as paramount to any claim, right, or estate therein held by any of the said parties, except as hereafter excepted in this deed, and
34 that the said property specified therein, with all of the additions, ameliorations, improvements, constructions, and works made by the defendants thereon during their occupation of the same, should be exposed to sale for the purpose of paying the debt due to the holders of the bonds issued *bona fide* and held by the plaintiffs in the said cause, and the said decree did declare that the property aforesaid should be subject to a claim of the North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand six hundred and six $\frac{8}{100}$ dollars, with five per cent. interest thereon from the 13th April, A. D. 1875, until payment was made, as defined in the decree aforesaid and is particularly described therein, and, that this sale should be made, the said court appointed Francis A. Woolfley as a special master to superintend the said sale and to make the same under the direction of the said decree of the circuit court of the United States in the cause aforesaid:

Know all men by these presents that I, Francis A. Woolfley, master as aforesaid, under the direction of said decree, did cause all of the property of whatever kind included in the said mortgage of the said Vicksburg, Shreveport and Texas Railroad Company,
35 real or personal, and the railroad of the said company, commencing on the Mississippi river opposite to Vicksburg and extending to the Texas line by way of Monroe and Shreveport, with all of the rights, privileges, franchises, and immunities granted to the said company in any acts of the General Assembly, and all of the additions, ameliorations, improvements, constructions, and works thereon made by any of the defendants during their occupation of

the same, with the rights of way, depots, depot grounds, water stations, buildings, locomotives, engines, machinery, fixtures, or whatever else is in use upon said railroad or attached thereto or that appertains to the same, without reservation and exception, and all the lands of whatever description owned by the said corporation or which have been acquired by the same for the said company, including the lands donated by the State of Louisiana in the acts of the General Assembly in 1856 and 1857, as specified in the mortgage to be advertized for sale on the first day of December, 1879, between the hours — 12 m. and 3 o'clock p. m.—say at one (1) o'clock p. m.—in bulk, for cash, to the highest bidder, publishing
36 notice in three newspapers for six consecutive weeks before the day of the sale, three times each week, one paper published at New Orleans, to wit, the New Orleans Times; in paper published in the city of Atlanta, Georgia, to wit, the Atlanta Daily Post, and one published in the city of New York, to wit, the New York Commercial Advertiser; and on the first day of December, 1879, at the time and place stated in the notices and in the manner required by the said decree, I did sell the same at public auction to the last and highest bidders for the said property, viz., Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hooper, and H. B. Plant, and the survivors or survivor of them, they being a committee appointed by a majority of the bon-holders, with authority to make the purchase for them and for those who should be associated with them under the terms of the decree of the said court directing the sale of the property aforesaid, for the sum of sixty thousand dollars, which was paid to me by the said committee, in lawful money of the United States, on the spot.

Wherefore, and in consideration of the premises and the payment of the sum of money aforesaid by the said committee and the confirmatory order of the said court authorizing the delivery of
37 the property to the purchasers and the execution of a deed to them, I, the said Francis A. Woolfley, special master as aforesaid, do hereby grant, bargain, sell, and convey to the said Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant and to the survivors and survivor of them, in full property and dominion, the railroad of the Vicksburg, Shreveport and Texas Railroad Company as constructed or to be constructed under the charter and plans of survey or location, with all of the additions, ameliorations, improvements, constructions, and works of the defendants or any of them to the same or in connection therewith, with all of the rights, privileges, franchises, immunities granted to the said corporation in respect to the same, and all the lands acquired by grant or donation from the United States or the State of Louisiana under the acts before mentioned and specified in the mortgage, and all of the real and personal property and effects comprehended in the terms of the mortgage or used in any connection with the said railroad; to have and to hold the same in full property and dominion, freed and discharged from the right, title, claim, estate, and demand of the said Vicksburg, Shreveport
38 and Texas Railroad Company and of the defendants and

every one of them, except that the lien and mortgage of the North Louisiana and Texas Railroad Company for the sum of two hundred and ninety-four thousand six hundred and six $\frac{8}{100}$ dollars, with interest at the rate of five per cent. per annum from the 13th April, 1875, established by the decree of this court bearing date the third day of July, 1879, and the remedies to enfor-e the same, therein contained, are reserved without diminution.

And the said Henry R. Jackson, Lemuel P. Grant, Wm. M. Wadley, Edward Hoopes, and H. B. Plant accept this deed, for the uses and purposes therein mentioned, for themselves and the parties interested.

As witness my hand, the master aforesaid, and our hands, the committee aforesaid, this 20th day of December, A. D. 1879.

(Sig.) F. A. WOOLFLEY,
Special Master.
" HENRY R. JACKSON,
" LEMUEL P. GRANT,
" WM. M. WADLEY,
" EDWARD HOOPES,
" H. B. PLANT,
Committee,

(Sig.) By JNO. A. CAMPBELL,
Solicitor and Att'y for the said Parties.

Filed in court —.

39 Executed in the presence of—
(Sig.) S. V. COUPLAND.
" R. B. HOLLY.

STATE OF *Orleans* LOUISIANA, }
Parish of Orleans. }

By this instrument of declaration be it known that on this twentieth day of December, in the year one thousand eight hundred and seventy-nine, before me, John David Crawford, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared John A. Campbell and Francis A. Woolfley, of the city of New Orleans, the parties to the foregoing deed, who are well known to me as such, and who signed and executed the same in my presence and that of the subscribing witnesses, and declared that they signed and executed the annexed instrument for the uses and purposes therein set forth.

In testimony whereof I hereunto set my hand and seal of office.

(Sig.) J. D. CRAWFORD,
Notary Public.

Filed Dec. 24th, 1879.

I, the undersigned, recorder in and for the parish of Ouachita, State of Louisiana, hereby certify that said act of sale was duly inscribed in the Record of Conveyance Book "X," pages 433, 434, 435, 436, 437, and 438.

40 Witness my hand and seal of office the day and date above filed.

(Sig.) R. W. McCLENDON, Jr.,
D'y Recorder for Ouachita Parish, Louisiana.

STATE OF LOUISIANA,
Parish of Madison.

RECORDER'S OFFICE.

Filed December 29th, 1879, for record.

I, Robert Barnes, recorder in and for said parish and State, do hereby certify that the foregoing act of sale, together with all documents attached, has been duly recorded in Notarial Record Book "I," pages 30, 31, 32, & 33.

In testimony whereof I hereunto sign my name and affix my seal of office this 31st day of December, A. D. 1879.

(Sig.) ROBERT BARNES,
Recorder of Madison Parish, La.

PARISH OF EAST CARROLL,
State of Louisiana.

Filed for record Jan. 5th, 1880.

I, Benjamin H. Lanier, deputy recorder in and for said parish and State, duly appointed and qualified, do hereby certify that the foregoing act of sale, together with all documents attached thereto, has been duly recorded in this office in Notarial Book "Q," folios 111, 112, 113, and 114.

41 In testimony whereof I hereunto sign my name and affix the seal of this office on this the sixth day of January, A. D. 1880.

(Sig.) R. H. LANIER,
D'y Recorder.

STATE OF LOUISIANA,
Parish of West Carroll.

Filed January 8th, 1880, for record, sig. W. A. Hendrick, recorder.

I, W. A. Hendrick, recorder in and for said parish and State, do hereby certify that the foregoing act of sale, together with all documents attached, has been duly recorded in Notarial Book "A," pages 158, 159, 160, and 161.

In testimony whereof I hereunto sign my name and affix my seal of office this 8th day of January, A. D. 1880.

(Sig.) W. A. HENDRICK,
Recorder for Parish of West Carroll.

STATE OF LOUISIANA, }
Parish of Franklin. }

Filed for record January 9th, 1880, sig. John C. T. Corkern, recorder, parish of Franklin.

I, John C. T. Corkern, recorder of the parish and State aforesaid, do hereby — that the above and foregoing deed, together with all documents thereto attached, also recorder's certificates, have this day been duly recorded in my office in my Notarial Book "H," folios 714, 715, 716, 717, 718, and 719.

42 Witness my official signature and seal on this 9th day of January, A. D. 1880.

(Sig.) JOHN C. T. CORKERN,
Recorder, Parish of Franklin.

STATE OF LOUISIANA, }
Parish of Richland. }

Filed for record January 12th, 1880, sig. Wiley P. Mangham, recorder, parish of Richland.

I, Wiley P. Mangham, recorder of the parish of Richland and State aforesaid, do hereby certify that the above and foregoing deed, together with all documents thereto attached, also recorder's certificates, has this day been duly recorded in my office in Notarial Book "G," pages 316, 317, 318, 319, 320, 321, 322, and 323.

Witness my official signature and seal of office this January 12th, 1880.

(Sig.) WILEY P. MANGHAM,
Recorder of Parish of Richland.

STATE OF LOUISIANA, }
Parish of Morehouse. }

Filed for record January 13th, 1880, sig. H. H. Naff, recorder, Morehouse parish.

I, Henry H. Naff, recorder of Morehouse parish, do hereby certify that the foregoing deed and certificates of acknowledgement thereto attached and the six foregoing certificates of record were this

43 day duly recorded in my office in Notarial Record Book "L," pages 545, 546, 547, 548, 549, 550, and 551.

Witness my hand and seal of office this 13th January, A. D. 1880.

(Sig.) H. H. NAFF,
Recorder, Morehouse Parish.

STATE OF LOUISIANA, }
Parish of Union. }

RECORDER'S OFFICE.

Filed for record January 15th, 1880, sig. James M. Smith, deputy recorder, Union parish, La.

I, James M. Smith, d'y recorder of Union parish, do hereby certify that the foregoing deed and certificate of acknowledgement thereto

attached and the seven foregoing certificates of record were this day duly recorded in my office in Notarial Record Book "R," pages 348, 349, 350, 351, 352, and 353.

Witness my official signature and seal of office this January 15th, A. D. 1880.

(Sig.) JAMES M. SMITH,
D'y Recorder for Union Parish, La.

STATE OF LOUISIANA, }
Parish of Lincoln. }

Filed for record January 16th, 1880, sig. H. S. Liggin, recorder in and for the parish of Lincoln, La.

44 I, H. S. Liggin, recorder in and for the parish of Lincoln and State aforesaid, do hereby certify that the foregoing deed and certificate of acknowledgement thereto attached and the eight foregoing certificates of record were this day duly recorded in my office in Notarial Record Book "B," pages 95, 96, 97, 98, 99, 100, 101, and 102.

Witness my official signature and seal of office this January 16th, A. D. 1880.

(Sig.) H. S. LIGGIN,
Recorder, Parish of Lincoln.

STATE OF LOUISIANA, }
Parish of Jackson, }

Filed for record this January 17th, 1880, sig. G. W. Edmundson, recorder.

I, G. W. Edmundson, recorder in and for the parish and State aforesaid, do hereby certify that the foregoing deed, acknowledgement, and the nine certificates of record have this day been duly recorded in Notarial Record, letter "A," pages 48, 49, 50, 51, 52, 53, 54, and 55.

Witness my hand and official signature this 17th day of January, A. D. 1880.

(Sig.) G. W. EDMUNDSON, *Recorder.*

STATE OF LOUISIANA, }
Parish of Bienville. }

RECORDER'S OFFICE.

45 Filed for record January 19th, 1880, sig. John M. Head, recorder.

I, John M. Head, recorder in and for the parish of Bienville, State aforesaid, do hereby certify that the foregoing deed, certificate of acknowledgement, and the ten certificates of record have this day been duly inscribed in this office in Notarial Book "L," folio- 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149.

Witness my official signature and seal of office this January 19th, A. D. 1880.

(Sig.) JNO. M. HEAD,
Recorder, Parish of Bienville, La.

STATE OF LOUISIANA,
Parish of Claiborne.

Filed for record January 19th, 1880, sig. J. R. Ramsey, recorder, parish of Claiborne, La.

I, J. R. Ramsey, recorder in and for the parish and State aforesaid, hereby certify that the within deed and certificate of acknowledgement, together with the eleven certificates of record, have been duly recorded in my office in Conveyance Book "L," pages 716, 717, 718, 719, and 720.

Given under my hand and seal of office this January 19th, 1880.

(Sig.) J. R. RAMSEY,
Recorder, Parish of Claiborne, La.

46 STATE OF LOUISIANA,
Parish of Webster.

RECORDER'S OFFICE.

Filed for record January 20th, 1880, sig. George McWeam, recorder, Webster parish, Louisiana.

I do certify that the within and foregoing deed and certificate of acknowledgement, together with the twelve certificates of record, have this day been duly recorded in my office in Book "3" of Conveyances, folios 193, 194, 195, 196, 197, 198, 199, and 200.

Witness my hand and seal of office, at Minden, Louisiana, this 20th day of January, A. D. 1880.

(Sig.) GEORGE McWEAM,
Recorder, Webster Parish, La.

STATE OF LOUISIANA,
Parish of Bossier.

Filed and recorded in Vol. "11" of Conveyances, pages 355 to 364, inclusive.

Witness my hand and seal of office, at Bellevue, Louisiana, this 21st January, A. D. 1880.

(Sig.) J. H. KEYSER,
D'y Recorder.

STATE OF LOUISIANA,
De Soto Parish.

47 RECORDER'S OFFICE.

I hereby certify the foregoing deed, acknowledgement, and certificates of record have on this day been duly recorded in this office in Book of Conveyances "T," pages 357 to 363, inclusive.

Witness my signature and seal of office, at Mansfield, De Soto parish, La., on this the 23rd day of January, A. D. 1880.

(Sig.) D. M. HERRIOTT,
Recorder, De Soto Parish, La.

STATE OF LOUISIANA,
Parish of Caddo.

I hereby certify that the above and foregoing is a true and correct

copy of the original deed, certificate of acknowledgement, and certificates of record, as the same appears on record in the clerk and *ex officio* recorder's office of the parish of Caddo, La.

Given under my hand and official seal this the 14th day of July, A. D. 1886.

(Sig.) W. P. FORD, *Clerk.*

48 Endorsed: No. 5033. U. S. circuit court. Henry R. Jackson *et al. vs.* V., S. & T. R. R. Co. *et al.* Deed of sale to Henry R. Jackson *et al.* Filed and recorded Jan. 20th, 1880. (Sig.) E. W. Durant, recorder. Copy. Filed July 26th, 1886. (Sig.) Aleck Boarman, judge.

49 *General Land Office Certificate.*

F. (4–205.) T. R. B. J. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 13th*, 1881.

I, C. W. Holcomb, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of decision of the Hon. Secretary of the Interior, of Mar. 18, 1881, in the case of Jas. A. King and Ambroise Martell *vs.* Vicksburg, Shreveport and Texas Railroad Company is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Sig.) C. W. HOLCOMB,
Acting Commissioner of General Land Office.

Copy of Decision of the Hon. Sec. of Interior Annexed.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 18, 1881.

The Commissioner of the General Land Office:

50 SIR: I have examined the case of James A. King and Ambroise Martell *v.* The Vicksburg, Shreveport and Texas Railroad Company, involving lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of section 31, town. 18 north, range 13 west, Natchitoches district, Louisiana, on appeal from your decision of October 9, 1879, in favor of the company.

The record shows that the greater portion of the township was surveyed in the year 1837, as shown by plat approved February 13th, 1837, but said tracts were not shown thereon, section 31 being left blank; that on March 19, 1838, a plat was approved showing these tracts as being covered by a body of water known as Silver Lake, which had been regularly meandered on the 2d and 3d of that

month; that on October 10, 1857 (the waters of said lake having receded), the surveyor general approved and forwarded to your office a supplemental plat representing the tracts in question allotted as faoresaid, having perfected the original map of said township by prortaction.

The record further shows that said tracts lie within six miles' limit of the grant, by act of June 3, 1856 (11 Stats., 18), to the State of Louisiana to aid in the construction of railroads in said State; that these tracts were approved for the benefit of said railroad October 7, 1859, and reapproved January 10, 1874; that on
51 January 1, 1858, your office approved the action of the register rejecting the application of one William S. Pike to locate internal-improvement warrents upon said tracts, because they were reserved for the railroad grant. On the 5th and 14th of May, 1858, the Commissioner reaffirmed his decision, which my predecessor, Mr. Secretary Thompson, affirmed June 17, 1858. September 28, 1872, certain parties, to wit, F. S. Legardy and A. Jones, made homestead entries of said tracts, but their entries were canceled November 20, 1872, because of conflict with the grant aforesaid.

The case now arises upon the application of plaintiffs (King and Martell) to make additional homestead entries of the tracts in question, which they allege were not "land" at the date of said grant nor for years thereafter, being covered by the waters of Silver Lake as late as the year 1866; that the plat approved October 10, 1857, was made without actual survey, and cannot therefore be considered as establishing the status of these tracts at that time, and on August 2, 1878, they, by their counsel, made a motion for a hearing and investigation to establish said allegations. In support of said motion it is urged by counsel—

1. That the certifications of 1859 and 1874 are void under section 2449, Revised Statutes; and

2. That the said decision of Secretary Thompson is not binding, the same having been in respect to persons not now in interest.

52 In disposing of the case as thus presented it is only necessary to say that the subject-matter involved was decided against the appeal of a former claimant upon these identical lands (with the exception of lot 3) by my predecessor, Mr. Secretary Delano, March 20, 1872, who held that the lands were originally a part of section 31 and properly certified to the State in 1859 for the benefit of the road. (See case of John W. Carlin *v.* said company, decided as above.)

The foregoing decision touching the identical lands in question, as stated, has all the force and effect of *stare decisis*.

Consequently the adjustment of the grant in 1874 in ascertainment of the right of the State under the act of July 14, 1870 (16 Stats., 277), declaring a partial forfeiture and the reapproval of the lists contain [containing] these particular lands as a part of said grant earned by the company, must be considered as a final adjustment and disposition of the subject-matter, which exhausted the power and jurisdiction of the Department.

Your decision is therefore affirmed, and the papers submitted with your letter of April 6, 1880, are herewith returned.

Very respectfully,

(Sig.) S. J. KIRKWOOD, *Secretary.*

Filed July 26.

[SEAL.] (Sig.) ALECK BOARMAN, *Judge.*

53 STATE OF GEORGIA, }
Fulton County. }

Know all men by these presents that I, Lemuel P. Grant, do hereby appoint Henry R. Jackson my special attorney-in-fact, for me and in my stead, to sign for me, as one of a committee, a deed of conveyance of the Vicksburg, Shreveport and Texas railroad and property to the Vicksburg, Shreveport and Pacific Railroad Company, hereby ratifying whatever my said attorney may do in the premises.

Witness my hand and seal this first (1st) day of June, 1881.

(Sig.) LEMUEL P. GRANT. [SEAL.]

Witness:

(Sig.) P. D. MANN.

(Sig.) B. R. FREEMAN,
Commissioner for the State of Louisiana at Atlanta, Georgia.

[Commissioner's Seal.]

STATE OF GEORGIA, }
Chatham County. }

Know all men by these presents that I, Wm. M. Wadly, one of the committee of bondholders of the Vicksburg, Shreveport & Texas Railroad Company, do hereby constitute and appoint Henry
54 R. Jackson my due [true] and lawful attorney, for me and in my name, place, and stead, as of said committee, to sell and convey, by deed for that purpose, the Vicksburg, Shreveport and Texas railroad, with all and singular its franchises and property, to the Vicksburg, Shreveport and Pacific Railroad Company, hereby authorizing the said Henry R. Jackson to sign my name as one of said committee to said deed, and hereby ratifying and confirming all that my said attorney may do as to the price or consideration and terms of said sale, and all that my said attorney may lawfully do in the premises, as fully and completely as if myself were present and directing the same to be done.

In witness whereof I have hereunto set my hand and seal at Savannah, Georgia, this first day of June, A. D. 1881.

(Sig.) WM. M. WADLY. [SEAL.]

In presence of—

(Sig.) J. LAWTON WHATLEY.
" T. M. CUNNINGHAM.

STATE OF GEORGIA,
County of Chatham.

Be it remembered that on this day came before me, Wm. B.
55 Adams, a commissioner of deeds for the State of Louisiana within and for the State of Georgia, duly commissioned and acting as such, Wm. M. Wadley, to me known personally, and signed the foregoing instrument in my presence and that of the two witnesses whose names are thereunto subscribed as such, and the said Wm. M. Wadley acknowledged that he had executed the foregoing instrument for the purposes therein mentioned and set forth.

In witness whereof I have hereunto set my hand and affixed my official seal, at Savannah, in the county of Chatham and State of Georgia, this first day of June, anno Domini one thousand eight hundred and eighty-one (1881).

[SEAL.] (Sig.) WM. B. ADAMS,
A Commissioner for the State of Louisiana.

STATE OF NEW YORK,
City and County of New York, } ss:

This act of sale, made and entered into this sixth day of June, 1881, by and between Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant, parties of the first part, and Vicksburg, Shreveport and Pacific Railroad Com-
56 pany, a body corporate duly organized and chartered under the laws of the State of Louisiana, party of the second part, witnesseth:

Whereas the parties of the first part did, upon the first day of December, 1879, at a sale made by Francis A. Woolfley, special master, authorized thereunto by a decree of the circuit court of the United States for the district of Louisiana, rendered on the third day of July, 1879, in the case of Henry R. Jackson *vs.* The Vicksburg, Shreveport and Texas Railroad Company *et als.*, No. 5033, purchase the railroad of said company and all of its franchises and property, real and personal, more particularly described in this act hereafter;

And whereas the said parties did, on the second day of December, A. D. 1879, in pursuance of their rights under the laws of the State of Louisiana, proceed to have themselves incorporated into a body politic, under the corporate name of the Vicksburg, Shreveport and Pacific Railroad Company, for the purpose of completing the
57 railroad purchased by them and of operating the same;

And whereas it was the intention of said parties of the first part, by said articles of incorporation, to vest in said Vicksburg, Shreveport and Pacific Railroad Company the title to the railroad, property, franchises, and rights of every kind acquired by the purchase at aforesaid sale:

Now, therefore, this deed witnesseth: That for the purpose of giving full effect to said intent and ratifying and confirming the title of said Vicksburg, Shreveport and Pacific Railroad Company to said railroad, franchises, rights, and property, real and personal, the par-

ties of the first part do hereby bargain, grant, sell, and convey unto the party of the second part, Vicksburg, Shreveport and Pacific Company, all and singular the property, real and personal, and the franchises and rights acquired by and vested in them by deed from Francis A. Woolfley, special master, to them, dated December 20th, A. D. 1879, and recorded in Ouachita parish, Louisiana, the domicile of said Vicksburg, Shreveport and Pacific Railroad Com-
58 pany, more particularly described as follows, to wit: The railroad of said company, commencing on the Mississippi river opposite to Vicksburg and extending to the Texas line, by way of Monroe and Shreveport, with all of the rights, privileges, franchises, and immunities granted to the said company in any acts of the General Assembly, and all of the additions, ameliorations, improvements, constructions, and works thereon made by any of the defendants in said case during their occupation of the same, with the rights of way, depots, depot grounds, water stations, buildings, locomotives, engines, machinery, fixtures, and whatever else is in use on said railroad or attached thereto or that appertains to the same, without reservation or exception, and all of the lands donated by the State of Louisiana in the acts of the General Assembly in 1856 and 1857:

To have and to hold the said property free from all liens, claims, or charges of the grantors.

The consideration of the above deed is declared to be the
59 sum of eight hundred and one thousand nine hundred and fifty-one dollars in cash paid *paid* the parties of the first part, the receipt whereof is hereby acknowledged, and the assumption and payment by said parties of the second part of a prior encumbrance on said property of the North Louisiana and Texas Railroad Company for the sum of five hundred & ninety-four thousand six hundred and six $\frac{8}{100}$ dollars, with interest, at the rate of five per cent. per annum, from the thirteenth day of April, A. D. 1875, and of all other liens and charges upon said railroad property.

And the said Vicksburg, Shreveport and Pacific Railroad Company accepts this deed for the purposes and uses therein mentioned.

In witness whereof the said Henry R. Jackson, Lemuel P. Grant, Wm. M. Wadley, Edward Hoopes, and H. B. Plant have hereunto set their hands and the Vicksburg, Shreveport and Pacific Railroad Company has caused its common seal and the signature of its president to be hereto affixed this sixth day of June, A. D. one thousand eight hundred and eighty-one.

60 (Sig.) HENRY R. JACKSON. [L. S.]
" WM. M. WADLEY, [L. S.]
By HENRY R. JACKSON, *Att'y.*
" EDWARD HOOPES. [L. S.]
" LEMUEL P. GRANT, [L. S.]
By HENRY R. JACKSON, *Att'y.*
" H. B. PLANT.
" E. RICHARDSON, *Pres't.*

[Seal V., S. & P. R. R. Co.]

Done in the presence of—
(Sig.) GEO. C. WADDELL.
" DAVENPORT JACKSON.
" W. B. PITTMAN.

Witnessing signature of E. Richardson, pres'd't, & affixing seal of company:
(Sig.) W. B. PITTMAN.
" GEO. C. WADDELL.

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this 8th day of June, A. D. 1881, before me, Charles Nettleton, a commissioner for the State of Louisiana for taking the acknowledgement and proof of deeds, etc., personally appeared George C. Waddel, who, being by me duly sworn according to law, on his oath said that he saw Henry R. Jackson, Edward Hoopes, and H. B. Plant, grantors in the above deed, sign, seal, and deliver the same as their act and deed, and at the same time that he saw Henry R. Jackson, as attorney for William M. Wadley and Lemuel P. Grant, two other grantors in the same deed, affix and
61 sign the names of the said Wm. M. Wadley and Lemuel P. Grant, by virtue and under authority of two powers of attorney from said Grant and Wadly to him then and there exhibited and now presented and attached to the said deed, and that he, the said George C. Waddell, subscribed his name to the same at the same time, as an attesting witness, and at the same time W. B. Pittman and Davenport Jackson, the other attesting witnesses, subscribed their names thereto.

(Sig.) GEO. C. WADDELL.

Subscribed in my presence and sworn to before me this 8th day of June, A. D. 1881.

(Sig.) CHAS. NETTLETON,
Commissioner for Louisiana in New York.

[Commissioner's Seal.]

I hereby certify that the above and foregoing is a true and correct copy of the original as recorded in my office in Notarial Book "Y," pages 278, 279, 280, 281, and 282.

In testimony whereof I have hereunto signed my name and affixed my seal of office this second day of September, A. D. 1881.

(Sig.) H. MOISE,
Deputy Clerk D. C.

62 STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing are true and correct copies of the original acts, powers of attorney to Henry R. Jackson from Lemuel P. Grant and Wm. M. Wadley and deed of sale to the Vicksburg, Shreveport and Pacific Railroad Company from Henry

R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant, as the same appears of file and record in the clerk and *ex officio* recorder's office in and for the parish of Caddo,

Given under my hand and official seal this the 13th day of July, A. D. 1886.

(Sig.) W. G. BONEY,
D'y Clerk & ex Off. D'y Recorder.

Endorsed: Deed. Henry R. Jackson, Lemuel P. Grant, William M. Wadley, Edward Hoopes, and H. B. Plant to V., S. & P. R. R. Co. Deed filed and recorded Sept. 9th, 1881. Sig. F. A.
63 Leonard, d'y clerk & *ex officio* deputy recorder. Copy. Filed July 26th, 1886. Sig. Aleck Boarman, judge.

Petition.

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, of the county of Shelby, State of Kentucky, with respect represents that he has been duly appointed and qualified as guardian of Wm. L. Smith, Elizabeth Ann Smith, Nancy B. Smith, Robert N. Smith, Jno. S. Smith, Mary M. Smith, and Martha L. Smith, minor heirs of John K. Smith, dec'd, late of the county of Shelby, State aforesaid, as appears by letters of guardianship, duly authenticated and annexed as part of this petition.

Petitioner further represents that the said minor heirs own a considerable amount of property in the parish of Caddo, which they inherited from their deceased father, the said Jno. K. Smith,
64 deceased, and that they are heirs-at-law of the late Wm. W. Smith, dec'd, whose succession is opened in Caddo parish, and as such entitled to one-half of the succession of the said W. W. Smith by virtue of representation from their father, the said Jno. K. Smith, dec'd, who was a brother of the said Wm. W. Smith, dec'd, the said Wm. W. Smith having no ascendants or descendants and no collateral heirs except your petitioner's wards and James Smith, of the county of Shelby, who is a brother of the said W. W. Smith, dec'd.

Petitioner represents that it is important that he be recognized as tutor or guardian aforesaid to take possession of said property and represent said minors.

Petitioner represents that no one residing in this parish is willing to take upon himself the tutorship and comply with existing laws by giving the required security, and no relative within the fourth degree that can be required to take the tutorship.

That in consideration of the premises petitioner is desirous of being recognized as tutor, having been appointed guardian in conformity with the laws of Kentucky, where the heirs reside, and of taking possession of the property and removing the property
65 to the State of Kentucky after legal delays and notices. He represents that it would be to the interest of said minors to

sell the property inherited from their father, as most of it is unproductive and subject to heavy taxes. He represents that a family meeting of the relatives and friends of said minors should be convoked to give their advice with regard to the disposition of said property and the administration of the same, and that an under tutor should be appointed. He represents that the said minors have only two relatives domiciliated in the parish, viz., Jno. W. Smith and Joseph Smith; that the family meeting will be composed principally of friends.

The premises considered, petitioner prays that he be recognized as guardian aforesaid; that a family meeting of the friends and relatives of said minors be convoked to give their advice touching the administration of the property of said minors and whether he shall accept the succession of W. W. Smith, dec'd, with the benefit of security; whether the property inherited from their father should be sold and on what terms; also what disposition shall be made of their portion of the succession of W. W. Smith, dec'd, and to
66 advise and recommend, if they see proper, some other suitable person for tutor, and prays that an under tutor be appointed, and for all orders and decrees necessary and for general relief.

Petitioner represents that the aforesaid James Smith, co-heir of petitioners herein, is present, and prays that he have notice of this application, and prays for an inventory and appraisement.

(Sig.) CRAIN & NUTT, *Att'ys.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

In this case, by reason of the law and the evidence, it is ordered, adjudged, and decreed that a family meeting of the relatives and friends of the minor heirs of Jno. K. Smith, dec'd, be convoked for the purpose of advising whether the property of the said minors situated in Caddo parish should be administered by their guardian, Jno. Brown, appointed in conformity with the laws of Kentucky, where said minors reside, by virtue of said appointment, or whether a tutor should be appointed and required to comply with the laws — this State by giving the required security—and, if so, to recommend a suitable person—and what disposition should be
67 made of the property belonging to said minors inherited from their deceased father, and, if they think it advisable to sell the same, on what terms it ought to be sold, and whether the guardian or tutor should be permitted to accept the succession of W. W. Smith, deceased, for the benefit of said minors; and, further, what disposition shall be made of the portion of said succession accruing to said minors, and that commission issue to some duly qualified notary public in and for Caddo parish to hold the family meeting.

It is ordered that said family meeting be composed of Jno. W. Smith and Joseph Smith, relatives of the minors, and the following friends, viz: N. S. McClure.

It is further ordered that T. C. Lewis be appointed under tutor

upon his taking the oath required by law, and that commission issue to take an inventory and appraisement, as prayed for.

(Sig.) D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition, waive citation and time, and admit the allegations of the petition.

(Sig.) JAMES F. SMITH.

68 Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Petition and order for family meeting. Filed Nov. 30th, 1858. A. H. Leonard, dep. clerk.

Commission for Family Meeting.

STATE OF LOUISIANA, }
Parish of Caddo. }

In District Court.

To Chas. H. Pitts, recorder & *ex officio* notary public in and for the parish of Caddo, Greeting:

You are hereby commanded, in the name of the State of Louisiana and our said court, to convoke, at such time and place as you may think fit, a meeting of the friends and relatives of the minor heirs of J. K. Smith, deceased, late of the county of Shelby, State of Kentucky, to deliberate and advise whether the property of the said minors situated in the parish of Caddo, State of Louisiana, shall be administered by the guardian, John Brown, appointed in conformity with the laws of the State of Kentucky, by virtue of said appraisement, whether a tutor for said minors shall be appointed and required to comply with the laws of this State by giving the required bond, and, if so, to recommend a suitable person, and advise
69 what disposition shall be made of the property belonging to said minors inherited from their father. If they think it advisable to sell the same, upon what terms; and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of such minors; and, further, what disposition shall be made of that portion of the succession accruing to said minors. It is further ordered that said family meeting be composed of John W. Smith, Joseph B. Smith, N. S. McClure, B. M. Johnson, and B. Logan, and a process verbal of same you will make to our said court, according to law.

Given under my hand and seal of office this 30th Nov'r, 1858.

(Sig.) THOS. H. CORBETT,
Dep. Clerk.

Procès-Verbal of Family Meeting.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

We and each of us, appointed members of a family meeting to de-

liberate and advise on the interest of the minor heirs of John K. Smith, deceased, do solemnly swear that in thus acting we will act fairly and impartially and to the best of our ability, so help us God.

70 (Sig.) B. M. JOHNSON.
" B. LOGAN.
" N. S. McCLURE.
" JOS. B. SMITH.
" J. W. SMITH.

Sworn to and subscribed before me this 30th day of November, A. D. 1858.

(Sig.) THOS. H. PITTS, *Recorder.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

By virtue of the annexed commission, issued out of the honorable the district court of the parish of Caddo and to me, the undersigned, recorder & *ex officio* notary public, directed, I caused to appear at my office, in the town of Shreveport, John W. Smith, Joseph B. Smith, Norment S. McClure, B. M. Johnson, and B. Logan, who, after having been duly sworn to advise and deliberate upon the affairs of the minor children of John K. Smith, deceased, late of the county of Shelby, State of Kentucky; and, further, whether or not the property of said minors in the parish of Caddo, State of Louisiana, shall be administered by their guardian, John Brown, appointed in conformity with — laws of the State of Kentucky, by virtue of said appointment; whether a tutor for said minors shall be ap-
71 pointed and required to comply with the laws of this State by giving the required bond, and, if so, to recommend a suitable person; and also to advise what disposition shall be made of the property belonging to said minors inherited from their father, if they think it advisable to sell the same, and upon what terms; and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of said minors; and, further, what disposition shall be made of the succession accruing to said minors, who, after having taken and subscribed the annexed oath, did deliberate and advise as follows, to wit:

That John Brown, the guardian of the minor heirs of John K. Smith, deceased, administer the property of said minors in the parish of Caddo, on his giving bond and taking the oath required by law, for the following reason, to wit: Some doubt might arise as to the right of said guardian administering said property under the acts of 1843. They further advise that the property inherited from their father be sold, one-fourth cash and the balance of the purchase-money payable in one, two, and three years from date of sale,
72 bearing eight per cent. interest from date, purchaser or purchasers to give their notes, dated and due as above, with approved personal security, with special mortgage, waiving benefit of appraisement, retained on the property, for the reason that the property, most of it, is unimproved, not productive, and subject to

high tax. That portion of it which is improved consists of frame buildings which are rapidly going to decay. They think it advisable for the guardian for said minors to accept the succession of W. W. Smith for the benefit of the minors, with the benefit of the inventory. They further advise that all the unproductive property inherited from the succession of W. W. Smith by said minors which they may receive by partition hereafter to be made be sold on the same terms as that inherited from their father, J. K. Smith, deceased, and if the spring place, cistern, and appurtenances should fall to said minors by said partition — be sold for one-fifth cash and the balance on a credit of one, two, three, and four years, purchasers to give notes, with approved personal security, bearing 8 % interest from date, and special mortgage, waiving the benefit of appraise-
73 ment, and that any other property that may fall to them, except the property on the levee, be sold on the same terms as that inherited from their father, J. K. Smith. They think it to the interest of the minors to keep the property on the levee inherited from the succession of W. W. Smith, deceased. They do not think it advisable for the tutor of said minors to take charge of any of the property belonging to the succession of W. W. Smith, deceased, which is administered by John W. Smith, until *until* a sufficient property has been sold or disposed of to pay the debts and liabilities of same.

Thus done and signed by the members of said family meeting and Thos. C. Lewis, under tutor for said minors, in the presence of Albert H. Leonard and Independence Crain, witnesses of lawful age and domicil, who sign with the parties and me, the said notary, on this 30th day of November, A. D. 1858.

Attest: (Sig.) B. M. JOHNSON.
" B. LOGAN.
" N. S. McCLURE.
" JOS. B. SMITH.
" J. W. SMITH.
" A. H. LEONARD.
" PENN CRAIN.

I approve the above proceedings.
(Sig.) T. C. LEWIS,
Under Tutor.

(Sig.) THOS. H. PITTS,
Recorder & ex Officio Not. Public.

74 *Petition for Homologation.*

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for Caddo parish:

The petition of John Brown with respect represents, in the matter of the tutorship of the minor heirs of Jno. K. Smith, dec'd, that he caused a family meeting of the relatives and friends of said minors to be convoked on the 30th day of November, 1858, and that the

process verbal of their deliberation has been returned and filed, to which reference is hereby made. He alleges that the proceedings were regular, and that he is desirous of having the same homologated.

Wherefore he prays for judgment of homologation; that he be permitted to qualify as tutor and have the property sold, as advised by said meeting; for a commission to take an inventory and appraisement; that his bond be fixed, and for all orders and decrees necessary and for general relief; for citation to the under tutor and att'y of absent heirs of W. W. Smith, dec'd.

(Sig.) CRAIN & NUTT.

Judgment Homologating.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

By reason of the law and the evidence and the foregoing
75 application it is ordered, adjudged, and decreed that the proceedings of the family meeting of the minor heirs of Jno. K. Smith, dec'd, had on the 30th day of November, 1858, before Thos. H. Pitts, recorder & *ex officio* notary public, be homologated and made the judgment of the court; that Jno. Brown be appointed the tutor of said minor heirs and recognized as tutor and have letters of tutorship on his giving bond, which is hereby fixed at sixty thousand dollars, and on his taking the oath required by law; and that the property belonging to said minors be sold and administered as advised by said family meeting; and that an inventory and appraisement of the property, rights, and credits of said minors be made, and it is ordered that R. White and S. Van Bibber be appointed appraisers.

Done and signed in open court this 1st day of December, 1858.

(Sig.) D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition and consent to the homologation prayed for.

(Sig.) T. C. LEWIS.

76 Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Petition and judgment homologating proceedings of family meeting. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

Oath of Tutor.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, John Brown, do solemnly swear that I will faithfully and impartially discharge and perform all the duties and trusts incumbent on me by law as tutor to the minor heirs of J. K. Smith, deceased, to the best of my ability and understanding, so help me God.

(Sig.) JOHN BROWN.

Sworn to and subscribed before me this 1st day of Dec'r, 1858.
(Sig.) N. E. WRIGHT, *Clerk.*

Endorsed: No. 720. In the matters of the tutorship of the heirs of J. K. Smith. Oath of tutor. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

Oath of Under Tutor.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

I, T. C. Lewis, do solemnly swear that I will faithfully and impartially discharge all the duties incumbent on me by law as
77 under tutor of the minor heirs of Jno. K. Smith, dec'd, to the best of my abilities, so help me God.
(Sig.) T. C. LEWIS.

Sworn to and subscribed before me this November 30th, 1858.
(Sig.) A. H. LEONARD, *Dep. Clerk.*

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Oath of under tutor. Filed Nov. 30th, 1858. (Sig.) A. H. Leonard, dep. clerk.

Bond of Tutor.

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, John Brown, as principal, and John W. Smith, J. B. Smith, and L. M. Nutt, as securities, are held and firmly bound unto N. E. Wright, clerk of the district court in and for the parish and State aforesaid, or his successor or successors in office, for the use and benefit of the heirs and legal representatives of John K. Smith, deceased, in the sum of sixty thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Dated at Shreveport this 1st day of Dec'r, A. D. 1858.

Whereas the above-bound John Brown has been appointed
78 tutor to the minor heirs of J. K. Smith, deceased: Therefore the condition of this obligation is such that if the said John Brown shall well and faithfully discharge and perform all the duties of tutor as aforesaid, according to law, then the above obligation to be null and void; otherwise to remain in full force and virtue.

(Sig.) JOHN BROWN.
" JOHN W. SMITH.
" JOS. B. SMITH.
" L. M. NUTT.

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Bond. Filed Dec'r 1st, 1858. (Sig.) N. E. Wright, clerk.

Letters to Tutor.

STATE OF LOUISIANA, }
Parish of Caddo. }

In Tenth Judicial District Court.

Whereas John Brown has this day been appointed tutor of the minors of J. K. Smith, deceased, and having given bond and security and taken the oath as prescribed the law, now, therefore, he is hereby authorized and fully empowered to discharge and perform all and singular the duties appertaining to the said appointment, according to law.

79 In testimony whereof I have hereunto signed my name and affixed my seal of office on this twenty-fourth day of January, A. D. 1866.

(Sig.) A. L. MERSHAM, *Clerk.*

Endorsed: No. 720. Tutorship of minors of J. K. Smith. Letters to tutor. Filed 24th Jan'y, 1866. (Sig.) A. L. Mersham, clerk.

Clerk's C-ificate.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, W. P. Ford, clerk of the 1st judicial district court of the State of Louisiana, held in and for the parish of Caddo, do hereby certify that the foregoing sixteen and a half (16½) pages contain a true, full, and correct transcript of the petition and order for a family meeting, the commission for and *procès-verbal* of, and the petition for and the judgment homologating the proceedings of said family meeting and appointing tutor, oaths of tutor and under tutor, bond of and letters testamentary to tutor in the matter of the tutorship of the minors of John K. Smith, dec'd, No. 720 on the docket

80 of said district court, as the same now appear- on file and of record in my office.

Given under my hand and official seal, at Shreveport, La., on this 22nd day of July, A. D. 1886.

[SEAL.] (Sig.) W. P. FORD,
Clerk 1st Dist. Court of La.

(Endorsed:) No. 720. Tutorship of minors of John K. Smith. Copy. Filed July 26, '86. (Sig.) Aleck Boarman, judge.

80*a* E. (4–207.) N. O. C. J. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 22, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed photographic copies of plats of surveys in townships 18 north, ranges 13 and 14 west, northwestern

district, Louisiana, approved by the surveyor general of Louisiana February 13, 1839; March 19, 1839; February 4, 1852; September 4, 1856, and October 10, 1857, are true and literal exemplifications of the official plats of said surveys on file in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Sig.) WM. A. J. SPARKS,
Commissioner of General Land Office.

(13151–1000.)

(Here follow three plates, marked pp. 80*b*, 80*c*, and 80*d*.)

81 *Pl'ffs' Summons.*

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

The President of (eagle here) the United States to the marshal of the district to execute & return.

To Henderson Markham, A. D. Battle, W. B. Wisenor, Jas. M. Wilson, W. R. Devoe, Geo. Turner:

You are hereby commanded to be and appear before a circuit court of the United States in and for the fifth circuit and district of Louisiana, to be holden at the city of Shreveport on the 28th day of July, 1886, at — o'clock a. m., then and there to testify the truth, according to your knowledge, in the matter of R. N. Smith *et al. vs.* Geo. A. Turner; and herein fail not under penalty of two hundred and fifty dollars.

Seal U. S. Circuit Court, Western Dist. of La.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Shreveport, this 27th day of July, in the year of our
82 Lord 1886, and of the Independence of the United States of America the 111th.

E. J. NOLAN, *D'y Clerk.*

Marshal's Return.

Received in office July 27th, 1886, and on the same day, month, and year I served a certified copy of the within by leaving same in the hands of Henderson Markham and A. D. Battle. On W. R. Devoe I made service by leaving a copy of the — with his wife at his domicile. After diligent search I failed to find W. B. Wisenor, and learned that he is sick at Rocky Point and unable to attend court.

(Sig.) GEO. G. WEAKS, *D'y Mar.*

On Geo. Turner I made personal service by leaving same in his hands. On J. M. Wilson I made service.

(Sig.) J. S. KERLEY, *Dep'ty.*

Filed July 28th, '86.

E. J. NOLAN, *D'y Clerk.*

Extract of Minutes of U. S. Circuit Court.

WEDNESDAY, *July 28th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boar-
83 man, district judge, presiding.

R. N. SMITH *et al.*
vs.
GEO. A. TURNER. } No. 80.

Case continued until to-morrow, Thursday, July 29th, 1886.

Ordered, That the court do now adjourn until to-morrow morning, Thursday, July 29th, 1886.

THURSDAY, *July 29th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et al.*
vs.
GEO. A. TURNER. } No. 80.

Answer of the Vicksburg, Shreveport and Pacific railroad filed. Motion on part of the Vicksburg, Shreveport and Pacific railroad for continuance filed. Motion overruled. Motion for continuance.

R. N. SMITH *et al.*
vs.
GEO. A. TURNER. } No. 80.

Motion for continuance filed on part of defendant, Vicksburg, Shreveport & Pacific railroad. Motion overruled.

This case — on to be heard as per assignment. Both parties
84 announced themselves ready for trial; whereupon came the following jury, to wit, Jas. Heffner, C. E. Sandford, H. Hunsicker, B. A. Holmes, A. Bercher, W. H. Busbey, Gid. Owens, Paul De Bergue, L. Gustine, S. Herold, H. Vestal, M. Cohen, twelve good and lawful men of the district, here in open court duly empaneled and sworn to well and truly try the case wherein R. N. Smith and others are plaintiffs and Geo. A. Turner and others are defendants, and true verdict render according to the evidence. The jury being completed, the court appointed S. Herold as foreman thereof. The case was then proceeded with, and after hearing the evidence in part the case was continued until to-morrow morning, Friday, July 30th, 1886, at 9 a. m.

Ordered by the court, That an attachment issue for W. R. Devoe, witness, for non-attendance.

Ordered, That the court do now adjourn until to-morrow morning, Friday, July 30th, 1886, at 9 a. m.

84*a* *Documents Filed in Evidence.*

E. In L. 37648. (4–207.) J. H. B. J. E.

DEPARTMENT OF THE INTERIOR, W. O. C.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 25, 1886.

I, Wm. A. J. Sparks, Commissioner of the General Land Office, do hereby certify that the annexed extracts from the field-notes of the survey of townships 18 north, ranges 13 and 14 west, district north of Red River, Louisiana, are true and literal exemplifications of so much of the official field-notes of the survey of said townships on file in this office as said extracts purport to represent.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Sig.) WM. A. J. SPARKS,
Commissioner of General Land Office.

(14502–1,500.)

84*b* *Field-Notes of Township* 18 *N., R.* 13 *&* 14 *West, Southwestern District of Louisiana.*

Variation of the needle, 8° 45′ east.

Commenced at a post corner to townships 17, R. 13 W.; 17, R. 14 W.; 18, R. 13 W., & 18, R. 14 west, and ran north on the east boundary of township 18, range 14 W., southwestern district Louisiana.

1st mile north.

27.00 Leave creek, runs to the left.
29.00 Small creek runs right.
40.00 Set ¼-section post at the head of an arm of Silver Lake, bears N. E.; willow 18 in. dia., S. 28 W. 16 lks.; willow 12 in. dia., N. 19 E. 11 lks.
52.00 To a prong of Silver Lake Co., N. W.; post oak 12 in. dia., S. 25 W. 17 lks.; elm 12 in. dia., S. 89 E. 32 lks.; N. 32 W. 18 lks.
63.00 Leave the lake; set post; S. gum 12 in. dia., N. 40 E. 14 lks.; S. gum 20 in. dia., N. 32 W. 18 lks.
80.00 Set 1st mile post in the town of Shreveport, whence a post oak 20 in. dia., S. 69 E. 98 lks.; hickory 18 in. dia., N. 80 E. 94 links; post oak 19 in. dia., N. 59 W. 65 lks.; post oak 18 in. dia., S. 57 W. 78 links.

2nd-rate rolling land. Timber, oak, hick., pine, & gum.

84*c*

2nd mile north.

11.00 To a bend of Red River, N. E.; willow 24 in. dia., S. 51 E. 26 links; ash 18 in. dia., N. 84 W. 30 lks.
15.00 Leave the river, bears N. E.; set post, whence a willow 20 in. dia. *dia.* bears N. 50 E. 11 lks.
28.00 To Cross bayou; set post; ash 18 dia., S. 67 8 lks.; ash 12 dia., S. 77 W. 15 lks.
35.00 Leave the Cross bayou; set post; cotton-wood 18 in. dia., N. 55 E. 24 lks.; ash 18 in. dia., N. 31 W. 28 links.
40.00 Set ¼-section post, whence an ash 10 in dia., S. 62 E. 23; ash 10 in. dia., S. 9 W. 17 lks.
80.00 Set 2nd mile post, whence a willow 12 in. dia., N. 81 E. 11 lks.; willow 12 in. dia., S. 33 W. 21 lks.; willow 12 in. dia., S. 37 E. 10 links.
Deep overflow—from 10 to 15 feet. Timber, oak, hickory, ash, gum, &c.

3rd mile north.

18.50 To Red River, leaves N. W. & S. E.; willow 8 in. dia., S. 64 E. 15 lks.; willow 18 in. dia., S. 12 W. 20 links.

* * * * * * *

Field-Notes of Township 18, *R.* 13 *W.*

* * * * * * *

Commenced at S. W. angle of said township and ran east 1st mile.
20.00 Improvement to the left.

84*d*

40.00 Set ¼-section post, whence a black oak 12 in. dia., S. 50 W. 28 lks.
44.50 Field, & leave it at 49.50 chs.
75.00 Field.
80.00 Set 1st mile post, whence hickory 12 in. dia., S. 51 E. 40 lks.; black oak 12 in. dia., N. 38 E. 51 lks.; black oak 8 in. dia., N. 68 W. 26 lks.; black oak 8 in. dia., S. 45 W. 52 lks.
2nd-rate rolling land.

2nd mile post east.

9.50 Leave the field.
40.00 Set ¼-sec. post, whence a hickory 8 in. dia., N. 13 W. 43; hickory 20 in. dia., S. 2° W. 47 lks.
48.00 To cut off Red River, S. E.; black oak 18 in. dia., N. 60. W. 4 lks.; black oak 18 in. dia., S. 25 E. 25 lks.
Rolling land, &c.

* * * * * * *

Field-Notes of Township 18, *R.* 13 *W., Southwestern District Louisiana.*

* * * * * * *

Commenced at the 1st mile post on the south boundary of T. 18, R. 13 W., and ran north between sections 31 & 32.

13.01 Leave the field.

24.00 Head of lagoon, N. W.

36.00 To Silver Lake; set post, whence a white oak 20 in. dia., N. 60 E. 27; white oak 20 in. dia., S. 43 W. 20 lks.

45.50 Leave the lake; cypress 20 in. dia., S. 68 W. 9 lks.; willow 18 in. dia., N. 55 E. 22 links.

84*e*

47.00 To Red River; set post, whence a cotton-wood 30 in. dia., S. 20 E. 42 lks.; sycamore 12 in. dia., S. 79 W. 52 lks. Rolling land, 2nd rate.

East between sections 30 & 31.

8.37 To Red River, bears S. east; set post, whence an elm 18 in. dia., N. 19 W. 33 lks.; cotton-wood 40 in. dia., S. 10 W. 54.

East between secs. 19 & 30.

8.50 To Red River; set post, willow 18 in. dia., S. 20 E. 10 lks.; willow 18 in. dia., west 10 lks.

* * * * * * *

Traverse of Silver Lake in front of sec. 31.

Commenced at a post at range line, corner to secs. 31 & 36, S. 30 E. 10.00; S. 60 E. 8.00; N. 30 E. 6.00; S. 20 E. 6.00; S. 64 E. 6.00; N. 35 E. 8.00; N. 35 W. 11.00; N. 45 E. 5.00; N. 87 E. 15.84; S. 75 E. 14.00; S. 56¾ E. 32.10, to post on line between secs. 31 & 32.

In front of section 32.

S. 50 E. 6.00 chs.; south 3.50 to high bluff; at 300 drain at the lower point of Silver Lake; S. 65 W. to corner of 31 & 32, on southern margin of Silver Lake.

In front of sec. 31.

S. 65 W. 8.00; at 3.00 lagoon, 4.00 wide; N. 84 W. 10.00; S. 45 W. 15.00; at 13.00 lagoon, 2.00 wide; N. 20 W. 10.00;

84*f* N. 55 W. 10.00; S. 47 W. 14.00; S. 57 W. 10.00; N. 27 W. 8.00; N. 59½ W.; at 8.00 prong of lake, 10.00 wide; bears

21.25 S. W. at — to traverse post on range corner to secs. 31 & 36.

JAS. P. TERRELL.

THOS. D. GATLIN &
E. SMITH,
Chainmen.

A. W. WARREN.

JOHN LEE,
RICHARD DODD,
Chainmen.

* * * * * * *

Field-Notes of Township 18 *N., R.* 13 *&* 14 *West.*

* * * * * * *

Traverse of Silver Lake in front of sec. 36.

Commenced at corner on range line N. 34 W., 10.00 N.
North 5.00.
S. 68 E. 6.00 to corner of 31 & 36 on range line.

* * * * * * *

Traverse of the right bank of Red River in front of sec. 30.

Commenced at a post near the mouth of Cross bayou, right bank & corner to sections 25 & 30, on the range line between ranges 13 & 14 W., T. 18 north, S. 35 E. 3.00 chs. to mouth of bayou; S. 9¼ W. 10.67 to corner of secs. 25 & 30, on range line; thence, with range line, 4.00 chs. to a post on said line and corner to 25 & 30; thence, in front of sec. 30, S. 37° 15′ E. 13.83 to line between sections 30 & 31.

84*g*

In front of sec. 31.

S. 55 E. 8.00 chs.; S. 75 E. 38.00; 57¼ E. 33.80 to line between sections 31 & 32.

In front of sec. 32.

S. 58 E. 21.00 chs.; S. 53 E. 25.00; at drain south; at 10.00 chs. ascend high bluff; at 20.00 chs. descend to low bottom; S. 69 E. 9.00 to Sewell's cut-off; south 11.00 to bluff.
S. 15.30 E. 6.85 to the corner of secs. 5 & 32, on town. line.

Traverse of the right bank of Red River.

Commenced at a post near the mouth Cross bayou, left bank & corner to 25 & 30, on the range line, thence up the river.

In front of sec. 30.

S. 58 E. 4.00 chs. to mouth of Cross bayou; N. 12 E. 7.00; N. 2 E. 20.00; N. 8¼ E. 20.50 to traverse post on line between sections 19 & 30.

In front of section 19.

N. 15 W. 12.00 chs.; N. 32 W. 6.50; N. 54¼ W. 240 to post on range line, corner to secs. 19 & 24. Commenced at a post on range, corner to secs. 13 & 18, thence, in front of sec. 18, S. 80 E. 10.00 chs.; S. 56 E. 10 chs.; S. 34¾ E. 15.90 to line between secs. 18 & 19; at 15.00 bayou.

In front of section 19.

S. 21 E. 8.00 chs.; S. 8 E. 14.00; at 12.00 bayou; south 25.00; S. 30 E. 10.00; S. 32 E. 2.50; east 25.00; N. 79 E. 13.00; N. 44 E. 3.50; N. 8 W. 5.00; N. 25 W. 5.50; N. 52 W. 10.00; N. 40 W. 20.00; N. 31 W. 13.00; N. 14¾ W. 8.20 to corner of 18 & 19.

* * * * * * *

Endorsed: Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

84*h* F. F. B. J. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *March* 24, 1882.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed list of lands, *re*-approved for the North Louisiana and Texas, formerly the Vicksburg, Shreveport and Texas, railroad, is a true and literal exemplification of the list of lands within the six-mile limits re-approved for said railroad by the acting Secretary of the Interior January 10, 1874, and of the whole of said list.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

84*i* "North Louisiana and Texas," formerly "Vicksburg, Shreveport and Texas, railroad."

List of lands in the district of lands subject to sale at Natchitoches, within the six-mile limits, granted to the State of Louisiana by the act of Congress approved the 3d of June, 1856, entitled "An act making a grant of lands to the State of Louisiana to aid in the construction of railroads in said State," being the vacant and unappropriated lands in the alternate sections, designated by odd numbers, for six sections in width on each side of the railroad, "from the Texas line, in the State of Louisiana, west of the town of Greenwood, via Greenwood, Shreveport and Monroe, to a point on the Mississippi river opposite Vicksburg," and being that portion of the original list of lands on file, approved by the Secretary of the Interior on the 7th of October, 1859, situated opposite that part of said road which was completed within the limitation of ten years allowed by the granting act of 3d of June, 1856, and which therefore have not reverted to the Government:

84*j* (4–298.)

North of Base Line and West of Principal Meridian.

North Louisiana and Texas 6 mile-limits railroad list, Natchitoches district.

No.	Parts of section.	Section.	Township.	Range.	Acres.	Remarks.
	Lot 3 or S. E. S. W. ¼	31	17	13	21.16	
	Lots 1, 2, 3, 4, 5, 6, 7, 8, & 9	31	18	13	178.80	
	W. ½ N. E. ¼, W. ½ S. E. ¼, E. ½ S. W. ¼, N. W. ¼ S. W. ¼, & N. W. ¼	1	16	14	444.79	
	N. W. ¼ N. E. ¼ & N. E. ¼ N. W. ¼	19	"	"	79.15	
	N. E. ¼ N. E. ¼ & N. W. ¼ S. W. ¼	7	17	14	80.25	
	E. ½ N. E. ¼, E. ½ S. E. ¼, S. W. ¼ S. E. ¼, & S. ½ S. W. ¼	25	"	"	280.17	
	S. E. ¼	35	"	"	159.35	
	N. W. fr'l ¼	11	18	14	21.15	
	N. fr'l ½ sec.	15	"	"	40	
	All of	17	"	"	640	
	" "	19	"	"	627.52	
	N. W. fr'l ¼	21	"	"	148.67	
	E. fr'l ½ sec., E. fr'l N. W. ¼, E. fr'l ½ S. W. ¼	29	"	"	160.25	
	W. fr'l ½ S. W. ¼ & N. W. ¼ N. W. ¼, S. ½ N. W. ¼ & S. E. ¼ S. W. ¼	3	16	15	118.25	
	S. W. ¼ N. E. ¼ & N. ½ S. W. ¼ & N. W. ¼	21	"	"	279.44	
	N. E. ¼ of S. W. ¼	3	17	15	37.45	
	W. ½ S. E. ¼	7	"	"	80 04	
	N. W. ¼ N. E. ¼	11	"	"	39.99	
	N. ½ N. E. ¼	13	"	"	80.27	
	S. ½ S. E. ¼ & S. E. ¼ S. W. ¼	13	18	15	109.94	
	S. ½ sec.	21	"	"	167.82	
84*k*	E. ½ S. W. ¼ & S. ½ N. W. ¼	23	18	15	280.63	
	S. E. ¼ & W. fr'l ½	25	"	"	127.55	
	All of	27	"	"	61.12	
	S. E. ¼ & S. ½ S. W. ¼	31	"	"	176	
	E. ½ N. E. ¼, S. E. ¼ & E. ½ S. W. ¼	1	17	16	320.12	
	S. W. ¼ S. E. ¼ & S. E. ¼ S. W. ¼	9	"	"	80.05	
	N. E. ¼ S. E. ¼	21	18	16	39.80	
	S. E. ¼ N. E. ¼ & E. ½ N. W. ¼	23	"	"	119.87	
	N. ½ N. E. ¼ & S. ½ S. E. ¼	27	18	16	159.25	
	N. W. ¼	29	"	"	160	
	All of fr'l or east part	31	"	"	264.24	
	Total				5,583.09	

84*l* (Within the six-mile limits.)

GENERAL LAND OFFICE, *January* 8, 1874.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Louisiana by the act of Congress approved 3rd of June, 1856, entitled "An act making a grant of lands

to the State of Louisiana to aid in the construction of railroads in said State" within the district of lands subject to sale at Natchitoches, Louisiana, being the vacant, unappropriated, and unreverted lands in the alternate sections, designated by odd numbers, for six sections in width on each side of the railroad," from the Texas line, in the State of Louisiana, west of the town- of Greenwood, Shreveport, and Monroe, to a point on the Mississippi river opposite Vicksburgh," and known as the "North Louisiana and Texas railroad," successors to the "Vicksburg, Shreveport and Texas railroad," within the State of Louisiana, and they are now submitted for the re-approval of the Secretary of the Interior in accordance with the requirements of said act of June 3d, 1856, and as authorized by the acting Secretary of the Interior's letter of Dec. 30th, 1873, subject to all its conditions and to any valid interfering rights which
84*m* may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.
[L. S.]

(Sig.) WILLIS DRUMMOND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON CITY, D. C., *January 10th*, 1874.

Approved, subject to the conditions and rights above mentioned.
(Sig.) B. R. COWEN,
Acting Secretary.

Endorsed: Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

85 *Summons.*

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit, Holding Sessions in and for the Western District of Louisiana.

The President of [eagle here] the United States to the marshal of the district of Louisiana to execute and return.

To Thomas Philips, E. M. Smith, Ed. Jacobs, & Geo. A. Turner:

You are hereby commanded to be and appear before a circuit court of the United States in and for the fifth circuit and district of Louisiana, to be holden at the city of Shreveport on the 29th day of July, 1886, at 9 o'clock a. m., then and there to testify the truth according to your knowledge in the matter of R. N. Smith *vs.* Geo. A. Turner; and herein fail not under penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of
86 the Supreme Court of the United States, at the city of Shreveport, this 29th day of July, in the year of our Lord 1886, and of the Independence of the United States the 111th.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Clerk.*

Marshal's Return.

Received in office July 29th, '86, and on the same day, month, and year I made personal service on E. M. Smith and domicile service on Thomas Philips by handing a copy of within to his wife; also a domicile — on Ed. Jacobs by handing a copy of within to his wife; personal service on Geo. A. Turner.

(Sig.) GEO. G. WEAKS, *D'y Mar.*

Filed July 29th, 1886.

E. J. NOLAN, *D'y Clerk.*

Attachment for W. R. Devoe, Witness.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to attach and hold in your
87 custody the body of W. R. Devoe, so that he be and appear at a circuit court of the United States for the district of Louisiana, holden in the city of Shreveport on 29th day of July, 1886, and to show cause (if any he has or can) why he should not be fined according to law for non-attendance as witness in said court on this 29th day of July, 1886.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of July, A. D. 1886, and 111th year of the Independence of the United States.

E. J. NOLAN, *D'y Clerk.*

Marshal's Return.

Rec'd in office July 29th, 1886, and on the same day, month, and year I attached the body of the within & produced the same in open court.

(Sig.) JNO. S. KERLEY, *Dep'ty.*

Filed July 29th, '86.

E. J. NOLAN, *D'y Cl'k.*

88 *Documents Filed in Evidence.*

Certificate No. 1.

LOUISIANA LAND OFFICE,
BATON ROUGE, *May 14th*, 1853.

It is hereby certified that in pursuance of law Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, on this day purchased of the register of this office the following-described land, to wit: The shallow lake known as Silver Lake, in the parish of Caddo, in township No. 18, of range- No. thirteen & fourteen, being in the northwestern land district of Louisiana and containing one

hundred and eighty-six & $\frac{57}{100}$ acres, at the rate of one $\frac{25}{100}$ dollars per acre, amounting to two hundred and thirty-three $\frac{31}{100}$ dollars, for which the said Wm. W. Smith has made payment in full as required by law.

(Signed) W. H. CRENSHAW, *Register.*

STATE LAND OFFICE,
BATON ROUGE, LA., *June* 18, 1856.

The above certificate is a true copy of the original on file in this office, by virtue of which patent No. 1383 was issued February 24th, 1855, as per record of this office.

[SEAL.] In testimony whereof, &c.

(Sig.) B. HARALSON, *Register.*

89 (Endorsed :) Copy of certificate of entry. Filed in evidence & marked No. "2." (Sig.) E. H. Pennall, dep'ty cl'k. Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

(Here follows plat marked p. 88*a*.)

State Patent.

[Eagle, shield, & arrows.]

No. 1383.

THE UNITED STATES OF AMERICA,
State of [*Seal of*] *Louisiana:*

Whereas Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, has exhibited and deposited in the State land office a certificate from the register of said office, issued May 14th, 1853, from which it appears that the said Wm. W. Smith has purchased with warrant No. 1 a certain shallow lake known as Silver Lake and situated in the parish of Caddo, in township No. eighteen north,
90 of range- Nos. thirteen & fourteen west, containing one hundred & eighty-six $\frac{57}{100}$ acres according to the official plat of the survey of the said lands returned to the State land office by the surveyor of the United States for the State of Louisiana; which said tract has been purchased and paid for at $1.25 per acre, and is in the northwestern land district of Louisiana:

Now, know ye that the State of Louisiana, in consideration of the premises and in conformity with law, have given and granted, and by these presents do give and grant, unto the said William W. Smith and to his heirs or assigns the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging, to the said William W. Smith.

In testimony whereof I, P. O. Hebert, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the land office of the State to be thereunto affixed.

Given under my hand, at the city of Baton Rouge, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United
91 States the seventy-ninth.

By the Governor:

(Sig.) P. O. HÉBERT.

(Sig.) L. SIGUR,

Register of the Land Office.

Record of Patents, vol. 2nd, page 88.

Endorsed: Filed in evidence, "mark- (A)." (Sig.) N. E. Wright, clerk. Patent filed in evidence Nov. 22, 1860, and marked No. "10." (Sig.) E. H. Pennall, deputy cl'k. Filed May 31, '56. (Sig.) Thos. H. Pitts, dep. cl'k. Filed July 29th, 1886. (Sig.) Aleck Boarman, judge.

92 *Certified Copy of Field-Notes.*

At a white oak 20 in. dia., S. 19 E. 46 lks.; white oak 18 in. dia., N. 19 W. 28 lks.

At a white oak 24 in. dia., S. 45 W. 68 lks.; ash 15 in. dia., N. 42 E. 93 lks.

B. Black oak 18 in. dia., N. 84 E. 55 lks.; hickory 12 in. dia., S. 51 E. 46 lks.

Hickory oak 20 in. dia., S. 36 W. 58 lks.; red oak 18 in. dia., N. 32 W. 81 lks.

A. Willow 18 in. dia., S. 28 W. 16 lks.; willow 12 in. dia., N. 19 E. 11 lks.

B. Post oak 12 in. dia., S. 25 W. 17 lks; elm 12 in. dia., S. 89 E. 32 lks.

C. Sweet gum 12 in. dia., N. 40 E. 14 lks; sweet gum 20 in. dia., N. 32 W. 18 lks.

Traverse of Silver Lake.

From the point C traversed Silver Lake, viz: S. 30 E., 10.00; S. 60 E., 8.00; N. 30 E., 6.00; S. 20 E., 6.00; S. 64 E., 6.00; N. 35 E., 8.00; N. 35 W., 11.00; N. 45 E., 5.00; N. 87 E., 15.84, to Larking Edwards' corner; thence S. 75 E., 14.00; S. 56¾ E., 32.10, to post on line between sections 31 & 32; thence in front of section 32 S. 50 E., 6.00; south, 3.50, to High Bluff; S. 65, W. 5.10, to corner of 31 & 32, on southern margin of Silver Lake.

Traverse of Silver Lake in front of sect. 31.—S. 65 W., 8.00; N. 84 W., 10.00; S. 45 W., 15.00; N. 20 W., 10.00; N. 55 W., 10.00; S. 47 W., 14; N. 57 W., 10; N. 27 W., 8.00; N. 59½ W., 21.25, to traverse post on range, corner to sections 31 & 36; thence with the traverse of Edwards' claim N. 34 W., 10.00; north, 5.00; S. 6 E., 6.00, to place of beginning.

LAND OFFICE, LA., *June 10th*, 1853.

I, W. H. Crenshaw, register of the land office of La., do hereby

certify the above to be a true copy of the field-notes, as certified by the surveyor general of La., on file in this office.

(Sig.) W. H. CRENSHAW, *Register.*

93 STATE LAND OFFICE, BATON ROUGE, LA., *May 14th*, 1856.

I hereby certify the foregoing field-notes and accompanying sketches to be true copies of the originals on file in this office, which have been approved by the surveyor general of Louisiana.

[SEAL.] In testimony whereof I have hereunto affixed the seal of my office the day above written.

(Sig.) B. HARALSON, *Register.*

(Here follows plat marked p. 92*a*.)

Endorsed: Plat. T. 18, R. 13, & T. 18, R. 14. Shreveport & Silver Lake. (Sig.) Leonard. Filed July 29th, '86. E. J. Nolan, d'y clerk.

94 STATE OF LOUISIANA *vs.* W. W. SMITH. } No. 5135.

(Index omitted in printing. See general index.)

Transcript from State Court of Louisiana.

95 Petition.

To the judge of the 18th judicial district of the State of Louisiana, parish of Caddo:

The petition of the State of Louisiana, herein represented by the undersigned, district attorney, specially empowered by R. C. Wickliffe, Governor, to institute this suit, with respect represents that the Legislature of the said State of Louisiana passed a law, which was approved by P. O. Hebert, Governor, on the 30th day of April, A. D. 1853, entitled "An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana," which said act was promulgated by publication in the official State paper on the 23rd day of June, A. D. 1853, and that said act provided that the register of the land office at Baton Rouge be authorized to sell all the shallow lakes in this State the area of which has been ascertained by surveys and which are susceptible of being reclaimed, wholly or in part, by draining or leveeing: Provided, That this act shall not apply to any swamp lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys been recognized by the State.

96 Petitioner represents that on the 14th day — May, A. D. 1853, William H. Crenshaw, register of the land office at Baton Rouge, pretending to act under said law, sold to William W. Smith,

of the parish of Caddo, who pretended, by his agent, Jno. S. Gooch, to purchase under said law, the following-described lands, lying and being situated in the parish of Caddo and adjoining the town of Shreveport, said lands at the time of said sales being shallow lakes, viz: Cross Lake, section 25, township 18, range 14, containing 21.18 acres, at one dollar and twenty-five cents per acre, for which *for which* a certificate of purchase and entry was delivered to said Smith, who is now in full possession of the same; also Silver Lake, section —, township 18, ranges 13 & 14, containing 186.57 acres, at one dollar and twenty-five cents per acre, for which a certificate of entry was issued to said Smith by L. J. Segur, register; but petitioner avers that the sale or entry of Silver Lake had been cancelled by W. H. Crenshaw, register, as appeared upon the records of the office, on the 10th day of June, 1853, and of this act said Smith had due notice.

Now, your petitioner alleges that said recited act of sale, entry, and patent are null; that they were done without authority
97 of law, and should be declared null & void by judgment of this court—

1st. Because the law under which said entries were made had not been promulgated at the date of said entries.

2nd. Because said lakes had not at the time of said entries been legally surveyed nor had the surveys been recognized by the State, nor have they yet been.

3rd. Because the "patent" to "Silver Lake" was issued by L. J. Segur, register, in error of the fact that the law was not promulgated at the time of the entry, and also in error of the other fact that the said entry had been cancelled before the law had been promulgated; otherwise he would not have issued said "patent." Petitioner alleges the further ground why said sale and entries should be cancelled, the fact that had said sales not been made before the promulgation of said law the same could have been sold for more — one dollar and a quarter per acre, to wit, for the sum of fifteen hundred dollars, and that should said sale, patent, and entries be now set aside they could be sold for twenty-five dollars per acre or more. Petitioner further alleges that he has made a legal
98 tender to said Smith of the sum and interest he paid for said lands, to wit, the sum of three hundred and thirty dollars, and demanded a surrender of said patent and certificate of entry that the same may be cancelled, which the said Smith has refused.

Prayer.

The premises considered, your petitioner prays that the said William W. Smith be cited to appear and answer hereto, and that judgment be rendered against him declaring the said certificate of entry and the said "patent" held by him to the said Cross and Silver Lakes lands null and void; and, further, that he be ordered to return them to the authorities of the State that they may be cancelled. Petitioner prays for all other orders, for costs, and for general relief.

(Sig.) HINTON SMITH,
Dist. Att'y 18th District.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition. Filed Dec'r 3d, 1857. (Sig.) A. H. Leonard. Recorded Dec'r 1st, 1860, in Book "J," pages 430 to 432. (Sig.) R. J. Wright, deputy clerk.

Citation to W. W. Smith.

In the District Court for the Eighteenth Judicial District, Parish of Caddo.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

99 State of Louisiana to W. W. Smith, of the parish of Caddo:

You are hereby cited to appear in the office of the clerk of said court, in the town of Shreveport, in the parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereto annexed, or file your answer thereto, in writing, after the service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

Witness the Honorable David Creswell, judge of the said court, this 3rd day of Dec'r, one thousand eight hundred and fifty-seven.

(Sig.) N. E. WRIGHT,
Dept. Clerk.

Attest:
(Sig.) N. E. WRIGHT, *Dept. Cl'k.*

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Citation. Filed Dec'r 8th, 1857. (Sig.) N. E. Wright, dep'ty cl'k.

To the judge of the 18th judicial district of the State of Louisiana, parish of Caddo:

100 The undersigned represents that some time since he filed a suit in the name of the State of Louisiana *vs.* Wm. W. Smith, No. 5135 of the docket, and that for the purposes of prosecuting said suit he obtained a commission to C. M. Bradford, a justice of the peace, New Orleans, ordering him to take the answers of L. J. Segur to certain interrogatories to him propounded, which said interrogatories to him propounded *which said interrogatories and crossed* by the counsel of said W. W. Smith, and the whole made returnable to the December term, 1857, of your court; that said commission has not been returned, but that the same has been lost or mislaid, as will appear by letter of said C. M. Bradford, hereto annexed.

Wherefore, inasmuch as the return day of said commission has passed, and the same having, moreover, been lost or mislaid, a second commission is solicited, that the testimony of said L. J. Sigur may be had by the approaching term of court.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Dist.

Let due notice issue to W. W. Smith of the filing of this petition and interrogatories and, after the legal delays, let a commis-
101 sion issue as prayed for.

Done and signed in office this 10th of Feb'y, 1858.
(Sig.) N. E. WRIGHT, *Clerk.*

Endorsed: 3135. State of Louisiana *vs.* W. W. Smith. Petition and order for commission to take depositions. Filed Feb'y 10th, 1858. (Sig.) N. E. Wright, clerk.

Exception.

In the District Court of Caddo.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH. } No. 3135.

And now comes the defendant and excepts to the petition and the demand contained therein on the following grounds, to wit:

First. Because the constitution of the State does not authorize the Governor to cause suits to be instituted against citizens whenever in his opinion such suits will be beneficial to the State.

Secondly. Because the Legislature has conferred on the Governor no such power or authority.

Thirdly. Because Hinton, as district attorney, is without Legislative authority to institute and maintain this action; &

Fourthly. Because suits of the character of this one cannot
102 be instituted by officers of the State without express Legislative sanction.

Wherefore defendant prays that this suit be dismissed with costs, and for general relief.

(Sig.) HODGE, LANDRUM & LAND,
Att'ys for Def't.

Endorsed: 5135. State of La. *vs.* W. W. Smith. Exception. Filed March 30th, 1858. (Sig.) F. A. Leonard, dep. cl'k.

Judgment of Dismissal.

18th District Court, Parish of Caddo, State of Louisiana.

STATE OF LOUISIANA
vs.
W. W. SMITH.

In this case, by reason of the law and evidence being in favor of defendant, it is ordered, adjudged, and decreed that the exception be sustained and suit dismissed at plaintiff's costs.

Thus done and signed in open court this 1st May, 1858.
(Sig.) D. CRESWELL,
Judge 18th Dist.

Motion for Appeal.

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

The plaintiff, by counsel, represents that the judgment dis-
103 missing this action on exceptions and motions of defendant is contrary to law and will effect injuriously its rights unless the same be reversed.

Wherefore plaintiff prays to be allowed an appeal, returnable to the supreme court of the State of Louisiana, to be holden at Monroe on the second Monday of July next, and that all legal notices and orders be made in this behalf.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Jud'l Dist.

Let an appeal be granted, returnable to the supreme court, to be held at Monroe on the second Monday of July next.

Endorsed: 5135. The State of Louisiana *vs.* W. W. Smith. Appeal. Filed April 29th, 1858. (Sig.) J. A. Kennedy, D. C.

Appeal Bond.

Know all men by these presents that we, the State of Louisiana, represented by Hinton Smith, dist. att'y for 18th judicial district, as principal, and Roland Jones, as surety, are held and firmly bound
unto W. W. Smith, his heirs and assigns, in the sum of one
104 hundred and fifty dollars; for the payment of which we bind ourselves firmly and *in solido*.

Dated this 10th day of June, A. D. 1858.

The condition of the above obligation is such that whereas a certain judgment was rendered at the March term, 1858, of the district court in and for Caddo parish, entitled The State of Louisiana *vs.* W. W. Smith, No. 5135 on the docket of said court, from which judgment the plaintiff herein, represented by Hinton Smith, dist. attorney as aforesaid, has taken a devolutive appeal:

Now, if the said plaintiff shall prosecute said appeal and pay all such costs as the said defendant, W. W. Smith, shall sustain in case said judgment shall be affirmed, then the above bond to be null and void; otherwise to remain in full force and virtue.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Jud'l Dist.

(Sig.) ROLAND JONES.

Endorsed: 5135. State *vs.* W. W. Smith. Appeal bond. Filed June 10th, 1858. (Sig.) R. J. Wright, dep'ty clerk.

105 *Petition of Revival.*

District Court, Parish of Caddo, State of Louisiana.

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

The undersigned, district attorney for the 18th judicial district, with respect represents that since the institution of the above-entitled cause the defendant, W. W. Smith, is deceased, and that Jno. W. Smith has been, by order of this court, appointed the administrator of his succession.

Wherefore petitioner, adopting all the allegations and demands of the original petition, prays that the said John W. Smith be cited to defend this action, and further asks for service upon all other legal representatives, for costs, and general relief.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Dist., for the State of Louisiana.

Service accepted. Citation and time waived.
(Sig.) L. M. NUTT,
Att'y for Adm'r.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition of revival. Filed Febr'y 14th, A. D. 1859. (Sig.) E. H. Pennall, dep'ty clerk.

106 *Answer.*

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

And now comes John W. Smith, administrator of the succession of W. W. Smith, deceased, and for answer denies all the allegations in plaintiff's petition and herein admitted.

He says he is the owner of all the right, title, and interest of Louisiana to the land claimed by virtue of a patent hereto annexed and made part hereof; that he purchased said land from the State of Louisiana according to law, and is owner of all the right and title thereof.

He prays that this suit be dismissed at plaintiff's costs and for trial by jury.

(Sig.) LANDRUM, *For D'f't.*

Endorsed: No. 5135. State of La. *vs.* W. W. Smith. Answer. Filed April 29th, 1859. E. H. Pennall, dep'ty cl'k.

Bill of Exceptions.

In District Court, Parish of Caddo.

STATE OF LOUISIANA
vs.
WM. W. SMITH. } No. 5135.

Be it remembered that, the above case being fixed for trial
107 this day (Friday, April 29th), and after it was called for trial and the plaintiff announced himself [itself] ready, the defendant, by his counsel, filed his answer, in which he prayed for a trial by jury.

The plaintiff, by its counsel, moved the court to strike out the prayer for jury as coming too late, and stated as facts, which were assented to — the court, that this case had been fixed for trial, on the week before last, for last week, when the jury had not been discharged, and, being reached, it was again, last week, before the jury were discharged, fixed for trial on this day (Friday, April 29); that under these circumstances the prayer for jury ought not to be allowed after the jury were discharged for the term, thereby necessitating the continuance of the case; but the court overruled the motion to strike out and allowed a jury; to which ruling of the court the plaintiff, by its counsel, excepts and tenders this bill, which it prays may be signed and made a part of the record, which is accordingly done, in open court, this 29th day of April, 1859.

(Sig.) D. CRESWELL,
Judge 18th Dist.

Endorsed: State of La. *vs.* W. W. Smith. Bill of excep-
108 tions tendered by plaintiff. Filed April 29th, 1859. (Sig.) E. H. Pennall, dep'ty clerk.

Amended Answer.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

The defendant, adopting all the allegations of his original answer, with leave of the court, amends his said answer by praying for trial by jury.

(Sig.) GEO. WILLIAMSON,
" HODGE & AUSTIN, *Att'ys.*

Endorsed: 5135. State of La. *vs.* W. W. Smith. Amended answer. Filed Nov. 28th, 1859. (Sig.) E. H. Pennall dep'ty clerk.

Evidence.

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

Plaintiff's evidence.

Copy of acts of Louisiana relative to sale of shallow lakes, of date 1853, filed in evidence and marked "A," with the certificate of promulgation annexed thereto.

Certificate of entry and cancellation of entry filed in evidence and marked "C."

109 HINTON SMITH, sworn, says that before the institution of this suit he made a tender to W. W. Smith of $330.00 in gold, current coin of the United States, as the district att'y, acting in behalf of the State of Louisiana, and demanded of W. W. Smith a surrender of the patent and certificate of entries of the lands in controversey. This tender and demand was made in the presence of L. D. Marks and James S. Flournoy.

Cross-examined, says that Judge Jones furnished witness with the money he tendered to W. W. Smith. The money was — to witness as an officer of the State. He was then acting as the district att'y for the 18th district court of Louisiana. Witness does not know whose money it was that he tendered to W. W. Smith. Judge Jones handed witness the money, and as soon as the tender was made witness returned the money to Judge Jones. Witness did not have the money more than an hour. Witness is not apprised of any appropriation of money by the State to refund this money to def't. No officer of the State ever gave witness any money to tender to defendant.

Re-examined by plaintiff:

Witness states that Judge Jones was assistant counsel with witness in the preparation and management of this suit until he
110 went on the bench. Witness knows of no law authorizing the employment of assistant counsel in the case. Witness was authorized by letter from the Governor of this State to bring this suit. The letter was handed to witness by Judge Jones.

Depositions of W. L. Crenshaw and Bertrand Harralson filed in evidence and marked "D."

Testimony of Mathew Watson, as admitted by counsel, filed in evidence and marked "E."

It is admitted that M. Watson was sheriff of Caddo parish at the time he served the notice alluded to in his evidence.

THOS. P. HOTCHKISS, sworn, says:

When he first knew Silver Lake, in 1837, the lake was a body of clear water. The water passed into Silver Lake from Red River, at

a low place at the head of the lake, in very high water and passed out at the lower end of the lake, rendering a part of the lake muddy from the mixing of the Red River water.

Witness thinks that Silver Lake rose from two to three feet at times from water running from the hills. There was places
111 in the lake when clear that were from fifteen to eighteen feet deep when he first knew it, where witness often fished. During low stages of the river the water in the lake was higher than the river. The lake did not run into the river except when the river was very high. The lake was supposed to have been formed from springs and rainwater. There were several springs, the branches from which run into the lake. When the river bank broke into the lake the deposit from the river commenced filling up the lake. In 1838, when the lands in Caddo parish were surveyed, the lake would not become dry from evaporation. Witness thinks the river broke through into the lake in the winter of 1843 or 1844. Witness thinks that when the river broke through into the lake the filling up of the lake by deposit was pretty rapid. The corporation of Shreveport had a ditch cut from Silver Lake into Red River for the purpose of draining the lake to prevent sickness. The number of fish dying from the lake becoming shallow was feared would produce sickness, and therefore the ditch was cut for the purpose of draining. In 1838 witness considered Silver Lake a permanent body of water. A ditch was cut from the lake to a steam
112 saw-mill — carry water to furnish the mill, and the mill was furnished with water the year round from the lake. It was witness' impression that the water was supplied the mill the year round. The lake on the hill side in 1838 was very deep, but on the side next to the river the bank sloped off and was not so deep. In 1838 the lake was so deep that it could not have been waded by persons to make a survey of it. Silver Lake never dried up until the ditch was cut by the corporation of Shreveport. The lake had fish in it in 1851—perch, trout, cat, and other kinds of fish. Perch and trout prefer clear water.

Cross-examined:

Since he has known the lake it was always lower in summer than in winter and spring. Red River, when very high, always ran into Silver Lake since witness knew it. At no time since witness knew the lake has the bottom of the lake been dry at low water except a portion of the upper end. Witness does not think that Silver Lake could have been reclaimed by leveeing and ditching when he first knew it; thinks the water was too deep. The lake could not have been drained by cutting a ditch into the river, but supposes
113 that if a levee was built down the river and a draining machine was fixed that the lake might have been drained. Witness has fished in Silver Lake since 1851, but the fishing was not so good as previously. The lake had filled up very much from deposit. Silver Lake might have been drained by artificial means in September, 1850, but it would have kept a machine throwing out water all the time. A common ditch would keep the lake drained at this

time. Witness thinks that in 1851 or '52 the bottom of the lake was so much filled up that the greater portion of the lake was higher than the water in Red River at low water. Witness thinks that a great portion of the deposit in Silver Lake was made from the overflow of 1849. The filling up of the lake was from natural causes, such as the breaking in of Red River. The lake was entirely — in the summer since the cutting of the ditch, except, perhaps, the summer — 1857. When Red River is up it overflows Silver Lake now as much as it did in 1850 or 1851.

Re-examined in chief:

SAM'L WELLS, sworn, says:

The ditch made in Silver Lake by the corporation was in
114 1855. Witness' knowledge of the lake commenced in 1853. He never knew the lake to dry before the cutting of the ditch in 1855. In 1854 some fish died in the lake, but the lake never dried up. In 1855 the fish died abundantly.

Cross-examined:

Says in 1854 a considerable portion of the upper part of the lake was dry; does not know about the lower part.

THOMAS M. GILL, sworn, says:

Has known Silver Lake since 1847. The lake was never dry from 1847 until the ditch was cut. The lake was supplied with water from springs when Red River was low.

GEO. WILLIAMSON, sworn, says:

He procured the testimony of S. J. Segure in case of W. W. Smith *vs.* Roland Jones, and caused two or three commissions to issue for the purpose of taking his testimony in this case, and failed to get his evidence taken by reason of his changing his residence, and also on account of his death.

Defendant's Evidence.

Patent from the State of Louisiana to W. W. Smith, filed in
115 evidence and marked "No. 1," with leave to substitute copy.
Certified copy of certificate from land office at Baton Rouge, filed in evidence and marked "No. 2."
Certified map of Silver Lake and certificates and notes, filed in evidence and marked "No. 3."

No. 284.

An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the register of the land office at Baton Rouge be, and he is hereby, authorized to

sell the shallow lakes in this State the area of which has been ascertained by survey and which are susceptible of being reclaimed, wholly or in part, by draining and leveling: Provided, That this act shall not apply to any navigable lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State.

(Signed) E. WARREN MOISE,
116 *Speaker of the House of Representatives.*
(Signed) W. W. FARMER,
Lieutenant Governor & President of the Senate.

Approved April 30th, 1853.
(Signed) P. O. HEBERT,
Governor of the State of Louisiana.

OFFICE OF THE SECRETARY OF STATE.

I hereby certify the foregoing to be a true copy of the original act on file in my office.

Given under my hand and seal of the State, at Baton Rouge, this tenth day of June, A. D. eighteen hundred and fifty-three, and of the Independence of the United States of America the seventy-seventh.

(Sig.) ANDREW S. HERRON,
[SEAL.] *Secretary of State.*

OFFICE OF THE SECRETARY OF STATE.

I hereby — that the act approved April 30th, A. D. 1853, entitled "An act to authorize the register of the land office to sell certain shallow lakes in the State of Louisiana," was promulgated in the official State paper on the 23rd day of June, A. D. 1853.

Given under my hand and the seal of the State, at Baton Rouge, this 13th day of May, A. D. 1856.

(Sig.) A. DUPLANTIER,
Ass't Secretary of State.

117 Endorsed: Filed in evidence and marked "A." (Sig.) M. E. Wright, clerk.

LOUISIANA LAND OFFICE,
BATON ROUGE, *May 14th*, 1853.

Certificate No. 1.

It is hereby certified that, in pursuance of law, Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, on this day purchased of the register of this office the following-described land, to wit: The shallow lake known as Silver Lake, in the parish of Caddo, in township No. eighteen, of ranges thirteen and fourteen, being in the northwestern land district of Louisiana and containing one hundred and eighty-six & $\frac{51}{100}$ acres, at the rate of one and $\frac{25}{100}$ dollars per acre, amounting to two hundred and thirty-three $\frac{81}{100}$ dol-

lars, for which the said Wm. W. Smith has made payment in full, as required by law.

(Signed) W. H. CRENSHAW, *Register.*

STATE LAND OFFICE,
BATON ROUGE, LA., *June 18th*, 1856.

The above certificate is a true copy of the original on file
118 in this office, by virtue of which patent No. 1383 was issued February 24th, 1855, as per record of this office.

In testimony whereof, etc.

[SEAL.] (Sig.) B. HARALSON, *Register.*

(NOTE.—The certificate of cancellation filed in evidence has been lost or mislaid, as it is not to be found in the record of this suit at this time, and is therefore omitted.)

Endorsed: Filed in evidence and marked "B." (Sig.) N. E. Wright, clerk.

MAY 14TH, 1853.

Purchaser, Wm. W. Smith.

Subdivision, Cross Lake.

Section 25, township 18, range 14; quantity, 21.18; price per acre, $1.25; $26.47.

Order No. 2.

STATE LAND OFFICE,
BATON ROUGE, *May 22nd*, 1856.

I hereby certify the above and foregoing to be a true and correct transcript of entry as taken from order book of swamp land now on file in my office.

119 (Sig.) B. HARALSON, *Register.*

Endorsed: Certificate of entry by Wm. W. Smith of Cross Lake, in sec. 25, township 18, R. 14, 21.18 acres. Filed in evidence and marked "C." (Sig.) N. E. Wright, clerk.

The State of Louisiana to any judge or justice of the peace of the parish of East Baton Rouge, State of Louisiana, in and for the same, or to any other duly commissioned and authorized officer to take testimony in civil cases by commission in and for the same, Greeting:

Know ye that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you William H. Crenshaw and B. Haralson, witnesses on the part of the plaintiff in a certain suit now pending in the district court in and for the parish of Caddo, State of Louisiana, numbered 5135, in which The State of Louisiana is plaintiff and William W. Smith is defendant, and the an-
120 swers of the said witnesses under oath to the annexed interrogatories you shall reduce to writing and cause the said

answers to be subscribed by said witnesses, and, after having duly certified the same under your hand and private seal, you will enclose with this commission and interrogatories, seal, and direct the same to the clerk of our said court on or before the 5th Monday in December instant.

Witness the Honorable David Creswell, judge of our said court, this 7th day of Dec'r, A. D. 1857.

(Sig.) A. H. LEONARD,
Dep. Clerk.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH.

Interrogatories to be propounded to Wm. H. Crenshaw and B. Haralson, residents of Baton Rouge, Louisiana, whose answers hereto are to be used in evidence by plaintiff on trial of the above-entitled cause.

To Wm. H. Crenshaw:

Int. 1st. Were you acting register of the State land office in the year 1853, and at the time Silver Lake and Cross Lake—the former in township 18, range 14, in the parish of Caddo—were entered?

121 If yea, who entered the said lands and for whom were they entered? Did not Jno. S. Gooch enter them for W. W. Smith?

Int. 2nd. State under what law said lakes were sold by you and entered by Smith, and also state the date of the passage of the law and of its promulgation, and also the date of said entry.

Int. 3rd. Did said Smith or his agent claim to enter said lakes under the laws of Congress granting swamp and overflowed lands in Louisiana to the State; if not, under what law did he claim to enter the same?

Int. 4th. At the time you sold said lakes had you any authority of law for so doing? If you had not, say whether you sold same in error, and, if you did, what was the error.

Int. 5th. Did you or not cancel on the records of your office the said entry of Smith of Silver Lake? If yea, say when, and did you not give him notice of the same and offer to refund the price paid?

Int. 6th. Was said notice served on Smith, and was a return of the service, as made by Mathew Watson, sheriff of the parish

122 of Caddo, sent your office at Baton Rouge? If yea, say about what time the notice was issued and returned as served on W. W. Smith.

Int. 7th. Have you made diligent search for said return in the land office at Baton Rouge; and, if so, have you found it?

Int. 8th. Did B. Haralson, present register, make said search with you?

Int. 9th. Do you or not know said Smith and his agent, Jno. S. Gooch, had notice of said cancellation in a few days after it was

made, and did you not inform them or either of them of the fact in person?

Int. 10th. Were any of the formalities required by the laws of Congress granting the swamp and overflowed lands to the State, or the formalities required by the act of the Legislature of 1853, approved April 30th, 1853, and entitled An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana, complied with at the time said Silver Lake was sold to Smith? Had said lands been selected by the State as swamp and overflowed lands and listed to the State as such? Had they become the property of the State and approved as such by the proper authorities at Washington city? Had they been legally sur-
123 veyed by the proper officers, and had said surveys been approved by the State?

To B. Haralson:

Int. 1st. Are you acting register of the State land office at Baton Rouge, Louisiana? If yea, please say for how long you have been so acting.

Int. 2nd. Were any of the formalities required by the laws of Congress granting the swamp and overflowed lands to the State or the formalities required by the act of the Legislature of 1853, approved April 30th, 1853, and entitled an act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana, complied with at the time Cross Lake, described as section 25, township 18, range 14, containing 21 acres, and Silver Lake, described as sections —, township 18, range 13 & 14, containing $186\frac{17}{100}$ acres (all lying in Caddo parish), were sold to W. W. Smith? Had said lands been selected by the State as swamp or overflowed land and listed to the State as such? Had they become the property of the State and been approved as such by the proper authorities at Washington city? Had they been legally surveyed by
124 the proper officers, and had said surveys been approved by the State? Also state here whether all of these formalities and requirements have been as yet complied with; and, if they have, say when.

Int. 3rd. Has any one applied to you to enter Silver Lake and other shallow lakes in this State, and what disposition did you make of such applications? Did you reject them; if so, why?

Int. 4th. Have you examined the records of the land office for the return of the notice to W. W. Smith of the act cancelling his entry of Silver Lake, and have you found it?

Int. 5th. How are lands belonging to the State of Louisiana disposed of when there are different applicants of equal rights claiming or proposing to enter the same tract?

Int. 6th. Do you not under circumstances as set forth in the next preceding interrogatory offer the land to the last and highest bidder? And please state here what is or has been the custom of the land office in such causes.

Int. 7th. State anything else you may know pertaining to this case.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Dist.

125 THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH.

Interrogatories to Wm. H. Crenshaw and B. Haralson.

Defendant accepts service and waives time, reserving all legal exceptions to the competency of the witnesses, to the pertinency of the questions, and the admissibility of the answers under the pleadings, and all other legal exceptions whatever, and propounds the following cross-interrogatory to Wm. H. Crenshaw:

X Int. 1. At whose instance did you make the cancellation of the entry and how did you make it?

(Sig.) LANDRUM & LAND, *For Def't.*

District Court, Parish of Caddo.

THE STATE OF LOUISIANA
vs.
WILLIAM W. SMITH. } No. 5135.

By virtue of a commission issued by the honorable the eighteenth district court in and for the parish of Caddo and to me delivered, I, John R. Dufroy, a justice of the peace in and for the parish of East Baton Rouge, State of Louisiana, have caused William H.
126 Crenshaw and Bertram Haralson to appear before me, after legal summons, at my office, in the town of Baton Rouge, and who, after being sworn on the Holy Evangelist, have made the following answers to the annexed interrogatories and cross-interrogatories, respectively:

Answers of Wm. H. Crenshaw.

Answer to first interrogatory. I was. The entry was made by J. S. Gooch, I believe, for W. W. Smith.

Answer to second interrogatory. The sale was made under an act of the Legislature approved April 30th, 1853. As to date of promulgation, reference must be had to the acts of the Legislature. The books in the land office show the entry to have been made on the 14th May, 1853.

Answer to third interrogatory. They did not. I have answered above, under special act of the Legislature.

Answer to fourth interrogatory. At the time of sale I thought I sold in conformity to law. I afterwards was satisfied I was in error, the law not having been promulgated.

Answer to fifth interrogatory. I did make an entry to cancel, and gave notice immediately.

127 Answer to sixth interrogatory. I sent the notice — the sheriff of Caddo parish, and it was returned to the land office endorsed as having been served by M. Watson as sheriff.

Answer to seventh interrogatory. I have searched and failed to find it.

Answer to eighth interrogatory. He did.

" " ninth " My recollection is that I informed J. S. Gooch in the land office and showed him the entry I made cancelling the sale.

Answer to tenth interrogatory. I supposed the formalities of the law to have been complied with. They were never claimed as "swamp land" or sold as such. The legality or illegality of the sale is for the courts to determine. My opinion would have no weight in controlling its decision. I therefore feel it unnecessary to answer the whole interrogatory.

Answer to eleventh interrogatory. Know nothing else.

Answer to cross-interrogatory. My recollection is that the cancellation was made at the instance of Judge R. Jones, who pointed out the fact of no publication having been made. I made a marginal note on the book showing the order of sale, and gave notice to the parties.

(Sig.) W. H. CRENSHAW.

128 Sworn to and subscribed before me this nineteenth December, 1857.

(Sig.) JOHN R. DUFROEY,
Justice of the Peace.

Answers of Bertrand Haralson.

Answer to first interrogatory. I am at present and have been the acting register of the State land office since the 24th March, 1856.

Answer to second interrogatory. From the records in my office it appears that William W. Smith entered Silver and Cross Lakes on the 14th day of May, 1853. There is on file in the office an old map of township 18 N., range- 13 & 14, upon which is represented both Cross and Silver Lakes; but no area is given nor do the lines appear to have been extended. Smith's entry is marked on Silver Lake on the old map, but not on Cross Lake. There is also an approved diagram, made by R. W. Boyd, then surveyor general, dated the 7th day of May, 1853, on file also in my office, representing both lakes, upon — Smith's entry is marked. There is no evidence to show when this diagram was filed. The act of the Legislature, approved April 30th, 1853, authorizing the sale of shallow lakes was promulgated on the 24th of June, 1853. Smith's entry of said lakes

129 was made prior to the promulgation of the law. There has never been any selection as "swamp" of said lakes, to my knowledge, nor is there any evidence on file in the office to that effect. Said lakes are considered by me to be the property of the

United States and not of the State of Louisiana. The State does not approve the maps and surveys returned to this office, but receives them as proper surveys upon the approval of the surveyor general of the United States.

Answer to third interrogatory. I have frequently been applied to by persons to enter lakes under the shallow-lake law before referred to, but have refused to sell said lakes, they not having been selected as swamp, and therefore not the property of the State.

Answer to fourth interrogatory. I have examined the record in my office for the notice of cancellation of the entry of Smith of Silver Lake, but have been unable to find it.

Answer to fifth interrogatory. When two or more persons apply at the same time to enter the same land, each with equal right, I have as register desired them to compromise the matter, which has always been done; otherwise I should have exposed the land
130 to the last and highest bidder. Such is the custom in the offices of the United States land district, as I have been informed.

Answer to sixth interrogatory. See answer above.

" " seventh " In the warrant book there is and opposite Smith's entry of Silver Lake the following words in the handwriting of William H. Crenshaw, register, to wit: "This sale is cancelled because sold in error, the law not having been promulgated. June 6th, 1853. (Sig.) William H. Crenshaw, register." The area given of Cross Lake, in section 25, on the diagram referred to above, is only twenty-one $\frac{17}{100}$ acres.

(Sig.) B. HARALSON.

Sworn to and subscribed before me this 19th day of December, 1857.

(Sig.) JOHN R. DUFROEY, *J. P.*

STATE OF LOUISIANA,
Parish of East Baton Rouge.

I hereby certify that the preceding pages, numbered 1, 2, 3, & 4, are the answers of William H. Crenshaw and Bertrand Haralson to the annexed interrogatories, to be used as evidence in the suit pending before the district court of Caddo —, entitled State of Louisiana *vs.* W. W. Smith, and that said testimony was duly taken down by me as they were [it was] delivered by the said parties.
131 Given under my hand this 19th day of December, 1857.

(Sig.) JOHN R. DUFROEY,
Justice of the Peace.

Endorsed: Filed in evidence and marked "D." (Sig.) N. E. Wright, clerk.

STATE OF LOUISIANA
vs.
W. W. SMITH.

The plaintiff expects to prove by Mathew Watson that in the

early part of the summer of the year 1853 he received a notice from Wm. H. Crenshaw, then register of the State of Louisiana, at Baton Rouge, addressed to Wm. W. Smith, the defendant, informing said Smith that his entry of Silver Lake, made May 14th, 1853, had been cancelled; that he (the said Watson) served a copy of said notice on the said W. W. Smith so soon as he received the same and made his return of service of the same to the register, Wm. H. Crenshaw, at Baton Rouge, in due time. The plaintiff cannot prove this fact by any other witness; that it is material, and that due diligence has been used to secure the attendance of said Watson, and that he is absent without the consent or contrivance of the plaintiff or its counsel.

(Sig.) HINTON SMITH,
Att'y for the State.

132 Endorsed: Filed in evidence and marked "E." (Sig.) N. E. Wright, clerk.

No. 1383.

THE UNITED STATES OF AMERICA, *State of Louisiana:*

Whereas Wm. W. Smith, of the parish of Caddo, in the State of Louisiana, exhibited and deposited in the State land office a certificate from the register of said office, issued May 14th, 1853, from which it appears that said Wm. W. Smith has purchased with warrant No. 1 a certain shallow lake known as Silver Lake, and situated in the parish of Caddo, in township No. eighteen north, of range Nos. thirteen & fourteen west, containing one hundred and eighty-six $\frac{57}{100}$ acres according to the official plat of the survey of the said lands returned to the State land office by the surveyor general of the United States for the State of Louisiana, which said tract has been purchased and paid for at $1.25 per acre, and is in the northwestern land district of Louisiana:

Now, know ye that the State of Louisiana, in consideration of the premises and in conformity with law, have given and granted,
133 and by these presents do give and grant, unto the said William W. Smith and to his heirs or assigns the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belong-, to said William W. Smith.

In testimony whereof I, P. O. Hebert, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the land office of the State to be thereunto affixed.

Given under my hand, at the city of Baton Rouge, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the seventy-ninth.

By the Governor:

(Sig.) P. O. HEBERT.
"
L. J. SIGUR,
Register of the Land Office.

Record of Patents, vol. 2nd, page 88.

Endorsed: Filed in evidence Nov. 12th, 1860, and marked No. 1. (Sig.) E. H. Pennall, deputy clerk.

NOTE.—The documents filed in evidence in this suit and marked Nos. "2" & "3" have been either lost or mislaid and are not to be found with the balance of the record at this time.

134 *Verdict of the Jury.*

We, the jury in the case of Louisiana against W. W. Smith, render verdict in favor of plaintiff that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACEY, *Foreman.*

Endorsed: No. 5135. The State of Louisiana *vs.* W. W. Smith. Verdict. Filed Nov. 12th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Judgment.

STATE OF LOUISIANA
vs.
W. W. SMITH.

In this case, by reason of the law and the evidence and the verdict of the jury, it is ordered, adjudged, and decreed that the certificates of entry made by W. H. Crenshaw, register, of Silver Lake, section —, township 18, ranges 13 & 14, amounting to 186.57 acres, at $1.25 per acre, and also of Cross Lake, section 25, township 18, range 14, quantity 21.18 acres, at $1.25 per acre, in favor of W. W. Smith, be annulled, avoided, and delivered up; and it is further ordered, adjudged, and decreed that the patent issued on the 24th day of February, 1855, in favor of W. W. Smith, the defendant, for Silver Lake, in the parish of Caddo, township 18, ranges 13
135 & 14, containing 186.57 acres, and issued by L. J. Sigur, register of the land office, be annulled and avoided and taken up, and that defendant pay costs.

Done and signed in open court on this the 24th day of November, 1860.

(Sig.) W. B. EGAN,
Judge 17th Dist., Presiding.

Endorsed: No. 5135. The State of La. *vs.* W. W. Smith. Judgment. Filed Nov. 24th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Motion for New Trial.

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

The defendant moves for a new trial in the above-entitled case

upon the ground that the verdict of the jury is contrary to the law and the evidence.

(Sig.) WILLIAMSON & HODGE.

Endorsed: No. 5135. The State of Louisiana *vs.* W. W. Smith. Motion for new trial. Filed Nov. 13th, 1860. (Sig.) E. H. Pennall, deputy clerk.

Motion for Appeal.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

136 The defendant, Jno. W. Smith, administrator for W. W. Smith, deceased, respectfully represents that the judgment in the foregoing cause will work irreparable injury to the succession if [of] said deceased unless the same be revoked; wherefore he prays that he be granted a devolutive and suspensive appeal from said judgment, returnable to the supreme court of the State of Louisiana on the second Monday of July next, 1861, at its session at the town of Monroe, parish of Ouachita.

He prays for all further necessary orders, decrees, and notices in the premises, and for general relief.

(Sig.) GEO. WILLIAMSON, *Att'y.*

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Motion for appeal. Filed Nov. 24th, 1860. (Sig.) N. E. Wright, clerk.

Extracts from the Minutes.

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered that on this the 22nd day of March, A. D. 1858, it being the first day of the regular March term, 1858, of the district court of the parish of Caddo—present, the Honl. David Cres-
137 well, judge 18th judicial district—met at 1 o'clock p. m. and adjourned until to-morrow, Tuesday, March 23rd, at 9 o'clock.

TUESDAY, *March 30th*, 1858.

Court met, pursuant to adjournment, at 9 o'clock a. m.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Exception filed.

SATURDAY MORNING, *April 3rd*, 1858—9 o'cl'k.

Court met pursuant to adjournment.

STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Default.

MONDAY MORNING, *April 13th*, 1858—9 o'clock.

Court opened pursuant to adjournment.

STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Exception sustained and suit dismissed at pl'ff's cost.

138 THURSDAY, *April 29th*, 1858—9 o'clock a. m.

The court met pursuant to adjournment.

STATE OF LOUISIANA
vs.
W. W. SMITH.

Motion for appeal filed and appeal granted, returnable to the next term of the supreme court, to be holden at Monroe on the 2nd Monday of July, 1858. Bond for devolutive appeal $150, and suspensive appeal bond according to law.

Defendant's counsel present takes cognizance.

STATE OF LOUISIANA,
Parish of Caddo.

In 18th Dist. Court.

Be it remembered that a regular term of the district court in and for said parish, begun and holden on the fourth Monday, 25th day, of October, 1858, at the court-house thereof, in the city of Shreveport and in the 18th judicial district of the State of Louisiana, the Honl. David Creswell, judge of said 18th judicial district, presiding.

TUESDAY MORNING, *October 26th*, 1858—9 o'clock a. m.

Court met pursuant to adjournment.

139 STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Death of defendant, W. W. Smith, suggested and leave granted to revive against the legal representatives.

STATE OF LOUISIANA,
Parish of Caddo.

At a regular term of the district court, begun and holden in and for the parish of Caddo, State of Louisiana, on the twenty-eighth day of March, 1859, it being the fourth Monday of said month—present, the Honl. D. Creswell, judge; H. J. G. Battle, sheriff, and N. E. Wright, clerk.

TUESDAY MORNING, *April 12th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE
vs.
W. W. SMITH. } No. 5135.

Default on petition of revival.

FRIDAY MORNING, *April 29th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE
vs.
W. W. SMITH. } No. 5135.

140 Answer filed and prayer for jury and jury allowed, and continued by consent.

STATE OF LOUISIANA,
Parish of Caddo.

At a regular term of the district court, begun and holden in and for the parish of Caddo, State of Louisiana, on the twenty-fourth day of October, 1859, it being the fourth Monday of said month—present, Honorable David Creswell, judge; H. J. G. Battle, sheriff, and N. E. Wright, clerk.

MONDAY MORNING, *Nov'r 8th*, 1859—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LA.
vs.
W. W. SMITH. } No. 5135.

Amended answer filed and prayer for jury refused.

STATE OF LOUISIANA,
Parish of Caddo.

In District Court.

Be it remembered that at a regular term of the 18th judicial district court, begun and holden on the fourth Monday in March, it being the 26th day thereof, in the year of our Lord one
141 thousand eight hundred and sixty, at the court-house in and for said parish and State, pursuant to the statute in such case made and provided, the Honorable Roland Jones, judge of said 18th judicial district, presiding.

SATURDAY, *April 7th, A. D.* 1860.

Court met pursuant to adjournment.

THE STATE OF LA.
vs.
W. W. SMITH.

Judge Jones, having been of counsel for plaintiff, recuses himself.

STATE OF LOUISIANA,
Parish of Caddo.

In 18th Judicial District Court.

Be it remembered that at a regular term of said district court, begun and holden on the fourth Monday of October, A. D. 1860, it being the 22nd day thereof—present, the Honorable W. B. Egan, judge of the 17th judicial district, presiding by virtue of an agreement — him and the Honorable Roland Jones, judge of the 18th judicial district, pursuant to the provisions of an act of the Legislature of the said State providing for the interchange of judges for trial of recused cases.

142 MONDAY MORNING, *November 12th,* 1860—9 o'cl'k.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA
vs.
W. W. SMITH.

And now come the parties and announce themselves ready for trial. Whereupon came a jury, to wit, M. Johnson, B. C. Tabor, M. T. J. Alston, S. Countz, W. C. Tyffe, T. B. Jordan, A. W. Marshall, H. Hefner, N. A. C. Hudson, David Stately, J. P. Hailey, and W. A. Lacey, twelve good and lawful men, of the parish of Caddo, sworn to well and truly try the issue joined between the State of Louisiana and the defendant, W. W. Smith, who, after hearing the evidence, argument of counsel, and charge of the court, returned here into open court, and upon their oaths do say:

We, the jury in the case of The State of Louisiana against W. W. Smith, render verdict in favor of plaintiff, that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACEY, *Foreman.*

TUESDAY MORNING, *November 13th,* 1860—9 o'clock.

Court met pursuant to adjournment.

143 THE STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Motion for new trial overruled.

SATURDAY MORNING, *November 24th*, 1860—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA
vs.
W. W. SMITH. } No. 5135.

Motion for devolutive and suspensive appeal filed by defendant and granted, and ordered by the court that the bond, in case of a devolutive appeal, be fixed at $200.00, and in case of a suspensive appeal according to law.

Whereupon it is ordered that the same be made returnable to the next term of the supreme court, to be holden at the town of Monroe, Ouachita parish, La., commencing on the 2nd Monday of July, 1861. Plaintiff's counsel, being present, takes cognizance of the order of appeal and waives service of citation.

Appeal Bond.

STATE OF LOUISIANA,
Parish of Caddo.

STATE OF LOUISIANA
vs.
144 W. W. SMITH.

Know all men by these presents that we, John W. Smith, administrator of the succession of W. W. Smith, deceased, as principal, and A. B. Levisee, as security, are held and firmly bound unto the State of Louisiana or to the Governor thereof, or his successors in office, plaintiff in the above-stated case, in the sum of two hundred and fifty dollars, for the payment of which we bind ourselves, our heirs and executors, *in solido*, firmly by these presents.

Dated at Shreveport, in the State and parish aforesaid, on this the 7th day of Dec., 1860.

The condition of the above obligation is such that whereas said John W. Smith has obtained an appeal from a certain judgment rendered adversely to him in the above-stated case, numbered 5135 on the docket of the district court of Caddo parish:

Now, if the said John W. Smith shall prosecute his said appeal to final judgment thereon and shall well and truly satisfy such judgment as may be rendered against him on said appeal, then this bond to be null and void; otherwise to remain in full force and effect.

145 (Sig.) J. W. SMITH,
Adm'r Est. W. W. Smith.

(Sig.) A. B. LEVISEE.

Endorsed: State of Louisiana *vs.* W. W. Smith. Appeal bond. Filed Dec'r 8th, 1860. N. E. Wright, clerk.

Judgment of Supreme Court.

Supreme Court of the State of Louisiana, Monroe. July Term, 1858.

FRIDAY, *July 23rd*, 1858.

Present: Their hons. E. T. Merrick, chief justice, and A. M. Buchanan, H. M. Spofford, and Jas. L. Cole, associate justices.

STATE OF LOUISIANA, Appellant, *vs.* W. W. SMITH, Appellee. } Appeal from District Court for Parish of Caddo.

In this case the court this day rendered their opinion and final judgment in writing, as follows, by Merrick, chief justice:

Defendant's counsel states the case for our consideration as follows, viz:

This suit was instituted by Hinton Smith, district attorney,
146 at the instance and request of the Governor, to annul a patent issued by the State to the defendant for a tract of land known as Silver Lake, purchased by him under the act of the Legislature authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana. See acts of 1853, p. 257.

The defendant excepted to the right of the district attorney to institute this suit without legislative authority. The exception was sustained and the suit dismissed. The district attorney has taken this appeal. The right of State to sue is not in question. The right of the district attorney to institute this suit without legislative authority is the question for determination. The State of Louisiana as a sovereign would be singularly deficient in power if there did not at all times exist in some of her officers a capacity to institute suits and take out legal measures on her behalf without awaiting the tardy action of the legislative department, which is in session only sixty days each year; consequently we might confidently expect to find such power granted by the constitution and the laws.

On looking into the constitution we find the powers of the
147 State distributed into three departments—legislative, executive, and judicial. Arts. 1 & 2. Article 38 declares that the supreme executive power of the State shall be vested in a chief magistrate, who shall be styled Governor of the State of Louisiana. As these powers are subsequently defined by the constitution, it is supposed that article 55, which declares that "he shall take care that the laws are faithfully executed," limits his power to a mere executio*ner* and enforcement of the laws.

To an argument of extreme nicety it may be replied that the laws give the State of Louisiana the land in controversey; it is but an execution of the laws to enforce them through the intervention of the judiciary.

The Governor therefore was authorized to give instructions to the district attorney, and the district attorney was authorized to institute this suit with or without such instructions. Sect. 8 of the act

of 1885, p. 369, makes it the duty of the district attorneys "to pursue on behalf of the State such legal measures as they may deem expedient for the recovery of all claims of the State the recovery of which is not otherwise provided for, and to report their pro-
148 ceedings annually to the auditor before the meeting of the Legislature." Rev'd Stats., p. 183. The next section, granting the district attorneys five per cent. on all amounts by them recovered and paid to the State, does not necessarily limit the more general terms used in the preceding section.

It is therefore ordered, adjudged, and decreed by the court that the judgment of the lower court be avoided and reversed, and that the exceptions be overruled and the cause be remanded to the lower court for further proceedings according to law, and that the defendant pay the costs of appeal.

CLERK'S OFFICE,
SUPREME COURT OF LOUISIANA, MONROE.

I hereby — the foregoing to be a true and correct copy of the original opinion and final judgment rendered by this court at the July term, 1858, in the above-entitled cause.

In witness whereof I have hereunto signed my name and affixed the seal of said court this 2nd day of August, A. D. 1858.

(Signed) H. M. BRY, *Clerk.*

149 Endorsed: No. 653. The State of Louisiana *vs.* W. W. Smith. Copy of opinion and final judgment of supreme court of La., Monroe.

Clerk's Certificate.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, W. P. Ford, clerk of the 1st judicial district court of the State of Louisiana, held in and for the parish of Caddo, do hereby certify that the above and foregoing fifty-seven pages (57) contain a true, full, and complete transcript of all the documents filed, evidence adduced, and proceedings had in the suit entitled The State of Louisiana *vs.* W. W. Smith, No. 5135 on the docket of said district court, except those documents which were either lost or mislaid before my entrance into the clerk's office of said parish.

Given under my hand and official seal, at Shreveport, La., on this 21st day of July, A. D. 1886.

(Sig.) W. P. FORD,
Clerk 1st Dist. Court of La.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Filed July 29th, '86. E. J. Nolan, d'y clerk.

150 *Application of Jno. W. Smith for Appointment of Counsel for Absent Heirs and Him as Curator of Succession.*

To the hon. the judge of the 18th judicial district of the State of Louisiana in & for Caddo parish:

The petition of Jno. W. Smith, of the parish & State aforesaid, with respect represents that the late W. W. Smith has recently died, leaving a large amount of property, consisting of land, negroes, merchandise, &c., in the parish of Caddo; that the heirs of said Smith, dec'd, are James F. Smith, brother of dec'd, and minor children & heirs of John K. Smith, dec'd, represented by their mother, Annie Smith, *née* Boswell, widow of said John K., dec'd, brother, all of the county of Shelby, in the State of Kentucky; that petitioner is a relative of the dec'd and of his said heirs & is willing to take charge of the succession until the heirs can be heard from and their wishes made known in reference to the estate.

The premises considered, he prays that notice be given of his application for the appointment of counsel of absent heirs, for an inventory & appraisement of the property, for all orders and decrees necessary, &, after legal delay, that he be appointed curator of the succession, & for general relief.

(Sig.) CRAIN & NUTT, *Att'ys.*

151 Let due notice be given of the foregoing application by publication in a newspaper according to law, & let a commission issue to make an inventory of said succession, & let W. O. Crain be appointed attorney to represent the absent heirs.

Done & signed, at office, this 25th day of Oct'r, 1858.

(Sig.) N. E. WRIGHT, *Clerk.*

I accept the above appointment.

(Sig.) W. O. CRAIN.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true and correct copy of the original petition of Jno. W. Smith to be appointed curator of the succession of W. W. Smith, dec'd, No. 716 on the probate docket of the 1st dist. court of La. in and for Caddo parish, as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., this 23rd day of February, A. D. 1886.

(Sig.) ALLAN V. WILSON,

[SEAL.] *Deputy Clerk, 1st District Court of La.*

152 Endorsed: 716. Succession of W. W. Smith. Filed Oct'r 25th, 1858. (Sig.) N. E. Wright, clerk. Copy. Filed July 29th, '86. (Sig.) Aleck Boarman, judge.

Extract from Minutes.

Supreme Court of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *Feb'y 18th*, '86.

Extract from the Minutes of the supreme court of Louisiana, holding sessions at Natchitoches, Tuesday, August 14th, 1866.

On Tuesday, the 14th day of August, A. D. 1866, the court met at 9 o'clock a. m., pursuant to adjournment.

Present: Hon'ble W. B. Hyman, chief justice; Z. Labauve, associate justice; James G. Talliafero, associate justice.

153 STATE OF LOUISIANA, Appellee, *vs.* W. W. SMITH, Appellant. } No. 53.

Answer filed. Case continued.

A true copy.

(Sig.) GEORGE W. DUPRÉ, *Clerk.*

Endorsed: State of Louisiana *vs.* W. W. Smith. Extract from minutes. Filed July 29, 1886. Aleck Boarman, judge.

Judgment Homologating Final Account.

STATE OF LOUISIANA, *Parish of Caddo.*

In District Court.

Succession of W. W. SMITH. No. 716.

By reason of the law and the evidence, there being no opposition, it is ordered, adjudged, and decreed that the final account filed by John W. Smith, administrator of said succession, on the 2nd day of July, 1867, be, and the same is hereby, homologated, approved, and made the judgment of the court. It is further ordered that said Jno. W. Smith, as adm'r, have judgment against said
154 succession for the sum of three thousand three hundred and thirty-six $\frac{4}{100}$ dollars, balance due him, as shown by said account. It is further ordered that said John W. Smith be discharged from the further administration of said succession, and that his bond as such administrator be cancelled.

Done and signed, at office, this August 3rd, 1867.

(Sig.) R. J. WRIGHT, *Clerk.*

Endorsed: No. 716. Succession of W. W. Smith. Judgment homologating final account. Filed August 3rd, 1867. (Sig.) R. J. Wright, clerk.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the foregoing is a true and correct copy of the original judgment homologating the final account of and discharging John W. Smith from the administration of the succession of W. W. Smith, dec'd, No. 716 on the docket of the 1st judicial district court of La., as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., on this 22nd day of July, A. D. 1886.

(Sig.) W. P. FORD,
[SEAL.] *Clerk 1st Jud'l Dist. Court of La.*

155 Endorsed: No. 716. Succession of W. W. Smith. Judgment homologating final account. Copy. Filed July 29, 1886. Aleck Boarman, judge.

I, Robert J. Wilson, clerk of the supreme court of the State of Louisiana, holding sessions at Monroe, La., do hereby certify that I have carefully examined the records of said supreme court, and that no appeal in a case entitled "The State of Louisiana *vs.* W. W. Smith," tried and determined in the district court within and for the parish of Caddo, said State, in the month of December, 1860, was ever filed in the supreme court.

In testimony whereof I hereunto set my official signature
[SEAL.] and affix the seal of said court, at the city of Monroe, on this the 26th day of July, 1886.

(Sig.) ROBERT J. WILLSON,
Clerk of C't at Monroe, La.

156 Endorsed: Filed July 29th, '86. E. J. Nolan, d'y cl'k.

M. D. Brainard, attorney and counsellor at law.

P. O. box —. (Dictated.)

WASHINGTON, D. C., *July 15th*, 1886.

George Hoadley, Jr., ass't gen'l counsel, Cincinnati, Ohio.

DEAR SIR: I am in receipt of your letter of the 13th instant, requesting me to secure an official certificate, under seal, from the Commissioner of the General Land Office of the facts set forth in his letter of June 23, 1886.

In reply permit me to say that I made application this morning for such certificate and my application was refused by the Commissioner on the ground that the law did not authorize him to make such a certificate.

You will have to use this letter in its present shape or take my deposition and attach the letter as an exhibit.

157 You can prove by me, in addition, that I have personally examined the records of the Land Office and — familiar with them, and know that the statements contained in the Commissioner's letter are true from personal investigations.

Very truly, M. D. BRAINARD.

P. S.—The letter of the 23 to me is herewith returned.

(Refer in reply to this initial: K.)

1886–65872. R. J. E.

DEPARTMENT OF THE INTERIOR, D. T. P.
GENERAL LAND OFFICE, L. J. W.
WASHINGTON, D. C., *June 23d*, 1886. M. A. C.

M. D. Brainard, Esq., att'y V., S. & P. R. R. Co., Washington, D. C.

SIR: In reply to your letter of the 17th inst. you are advised that, so far as the records of this office show, the State of Louisiana has never claimed lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, sec. 31, T. 18 N., R. 13 W., under the swamp grant, and I find nothing of record here to indicate that the State ever sold said lots as swamp land. Said lots were approved to the State Oct. 7th, 1859, under the grant in
158 aid of the construction of the Vicksburg, Shreveport and Texas, now Vicksburg, Shreveport and Pacific, railroad, made by the act of Congress approved June 3d, 1856, and, being opposite that part of the road completed within the time fixed by said act of 1856, they were re-approved Jan'y 10th, 1874.

Very respectfully,

(Sig.) S. STOCKSLAGER,
Ass't Commissioner.

Affidavit for Continuance.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER.

Before me personally came W. H. Wise, counsel, representing the Vicksburg, Shreveport & Pacific Railroad Company, defendant herein, who, being sworn, says that this case has just been put at issue at the present term of this court, and every diligence has been used to get the evidence necessary for defendant's case at the present term, even in advance of the issue being joined; alleges that defendant cannot go to trial without the testimony of —— Sparks and S. M. Stocklager, respectively Commissioner and Assistant Commissioner of the General Land Office of the U. S. Gov't and resi-
159 dents of Washington city, and of M. D. Brainard, of same residence, by whom defendant expects to prove that said named persons have recently examined the records of the General Land Office, at Washington city, and that said records show that the State of Louisiana has never claimed lots 1, 2, 3, 4, 5, 6, 7, 8, & 9, sec. 31, T. 18, R. 13 west, being same land described in plaintiff's petition as swamp and overflowed lands, under the swamp grants of 1849 & 1850, and that said records fail to show that the said State ever sold said land, or that it was ever listed by the Sec't'y of the Interior or General Land Office to the State of La.; and also expects to prove by said witnesses that said land was approved to the State of La. Oct. 7th, 1859, under the grant in aid of the construction of the Vicksburg, Shreveport & Texas, now Vicksburg, Shreveport &

Pacific, railroad, made by the act of Congress approved June 3d, 1856, and being opposite that part of the road completed within the time fixed by said act of 1856.

That he knows of no other witnesses by whom these material facts can be proved; that application was made timely to the General Land Office for a certificate setting forth these facts, but it was
160 refused, as will appear by annexed letters, on the ground that such certificate is not admissable or authorized by law.

That he expects to procure this testimony by the next term of this court, and makes this application for a continuance to that term for the purpose of obtaining justice & not for delay; and that the president and other officers of defendant company authorized to make affidavits of this character are now absent from the jurisdiction of this court.

(Sig.) W. H. WISE.

Sworn to & subscribed before me the 29th July, 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Cl'k.*

Endorsed: Robert N. Smith *vs.* Geo. A. Turner. Affidavit for continuance. Filed July 29, 1886. (Sig.) Aleck Boarman, judge.

161 *Answer of V., S. & P. R. R. Co.*

In U. S. Circuit Court for the Western District of La.

ROBERT N. SMITH *et als.* } No. —.
vs.
GEO. A. TURNER.

Now comes the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, and, for answer to plaintiffs' petition, denies all the allegations thereof and requires strict proof.

Further answering, alleges that the sale or entry of said land, as set forth in petition, was cancelled by the register of the State land office on the 10th day of June, 1853, as appears by the records of that office, and which cancellation was duly notified to said W. W. Smith, and that said sale, entry, and patent are null, and were done without authority of law, in this, to wit:

1st. Because the law under which said entries were made had not been promulgated at the date of the entry.

2nd. Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

3rd. Because the patent to said land was issued by the reg-
162 ister in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

Further answering, defendant alleges that said land was never selected by the State of Louisiana as swamp and overflowed lands,

and has never been reported to the Commissioner of the General Land Office and never approved as such by the surveyor general or by the Secretary of the Interior or Land Commissioner; and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, and that the State of Louisiana has never claimed or acquired said land as such; and, furthermore, that said land does not and never did belong to that class of lands, but to that other class of lands known or design-ed as "shallow lakes," and therefore not embraced in the grant from the U. S. Government, under the acts of Congress of 1849 & 1850, of swamp and overflowed lands.

Defendant, further answering, alleges that said defendant
163 company is the owner of said land by good and sufficient title, by grant from the United States Government under act of Congress approved June 3d, 1856, to the State of Louisiana to aid in the construction of railroads in said State of Louisiana, and which was accepted by said State of Louisiana for such purpose, and all the requirements of said grant having been complied with by said State and by the Vicksburg, Shreveport & Texas railroad, the land described in plaintiff's petition, being embraced in the said grant, was acquired by said railroad company and duly certified or patented as belonging to said company by the U. S. Government, and which has been legally sold and transferred by said railroad company to defendant company and deed duly recorded.

Further answering, defendant alleges that the land described in plaintiff's petition and sought to be recovered in this suit is worth at least ten thousand dollars.

Wherefore defendant prays that plaintiff's demand be rejected, and for judgment decreeing defendant company to be the owner of said land and quieted in possession thereof, & for general relief.

164 (Sig.) FRANK P. STUBBS,
" WISE & HERNDON,
Of Counsel for Defendant.

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Answer of V., S. & P. R. R. Co. Filed July 29, '86. (Sig.) J. W. Wheaton, cl'k.

Extract of Minutes of U. S. Circuit Court.

FRIDAY, *July 30th*, 1886.

Court met pursuant to adjournment.

Present: His honor Aleck Boarman, district judge, presiding.

R. M. SMITH
vs.
GEO. A. TURNER. } No. 80.

Reserved and continued until to-morrow, Saturday, July 31st, 1886.

Ordered, That the court do now adjourn until to-morrow morning, Saturday, July 31st, 1886, at 9 a. m.

165 SATURDAY, *July* 31*st*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et als.*
vs. } No. 80.
GEO. A. TURNER.

This case was again resumed, and, after hearing the argument of counsel and charge of the court, the jury retired to consider of their verdict; returning into open court, do upon their oaths say: "We, the jury, find for plaintiffs, and that the land sued for is described in the plat made by W. R. Devoe and filed in evidence."

Verdict of the Jury.

SHREVEPORT, *July* 31*st*, 1886.

We, the jury, find for plaintiff-, and that the land sued for is described in the plat made — W. R. Devoe & filed in evidence.
(Sig.) SIMON HEROLD, *Foreman.*

Endorsed: Entered & filed July 31,'86. E. J. Nolan, d'y clerk.

Ordered, That the court *the court* do now adjourn until Monday morning, August 2nd, 1886, at 10 a. m.

166 MONDAY, *August* 2*nd*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et als.*
vs. } No. 80.
GEO. A. TURNER.

Motion for new trial on part of defendant filed & assigned for argument Wednesday, August 4th, 1886, at 10 a. m.
Ordered, That the court do now adjourn until Wednesday morning, August 4th, 1886, at 10 a. m.

Motion for a New Trial.

In U. S. Circuit Court, Western District of La.

R. N. SMITH *et al.*
vs. } No. —.
GEO. A. TURNER.

Now comes The Vicksburg & Shreveport Railroad Company, the real defendants herein, by counsel, and moves the court to grant a

new trial for the reason that the verdict of the jury and the judgment rendered therein is [are] contrary to the law and the evidence.

Premises considered, defendant prays that said verdict and
167 judgment may be set aside and a new trial or rehearing granted, & further prays for all orders and decrees necessary in the premises, and general & special relief.

(Sig.) FRANK B. STUBBS,
(") WISE & HERNDON,
Att'ys for Def't Co.

Endorsed: No. 80. U. S. circuit court, western dist. of La. R. N. Smith *et al. vs.* Geo. A. Turner. Motion for a new trial. Filed Aug. 2, '86. (Sig.) J. W. Wheaton, cl'k.

Minutes of U. S. Circuit Court.

WEDNESDAY, *August 4th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et al.*
vs.
GEO. A. TURNER. } No. 80.

Motion for a new trial in this case overruled.

168 *Judgment.*

U. S. Circuit Court, 5th Circuit, Western District Louisiana.

ROBERT N. SMITH *et al.*
vs.
GEO. A. TURNER & THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 80.

In this case, by reason of the law and the evidence & the verdict of the jury being in favor of the plaintiffs and against the defendants, it is ordered, adjudged, and decreed that the plaintiffs, Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith, be and they are hereby declared to be owners of the land in controversy and entitled to the possession of same, said lands being known and described as follows, viz: Commencing at rock on range line between townships thirteen and fourteen and traverse of Silver Lake, thence south 59½ east twenty-one $\frac{25}{100}$ chains; thence north 45 east one thousand feet; thence north 10° east two hundred and eight feet to point of beginning of land in possession of defendant, George A. Turner;
169 thence same course five hundred & seventy feet to a willow tree thirty-two inches in diameter; thence north 23° east five hundred and fifteen feet; thence north 68° 40′ west four hundred & fifty-three feet; thence south 36° 40′ west two hundred and ninety-seven feet; thence from willow corner south 80° 35′ west two hun-

dred feet; thence south 55° 20′ west three hundred & nine feet; thence south 31° 40′ east four hundred & twenty-five feet; thence north 33° 40′ west five hundred feet; thence north 55° 15′ east four hundred & eighty feet; thence north 85° east three hundred and sixty-four feet; thence north 73° 20′ east two hundred & twenty feet; thence north 64° 3′ east three hundred & thirty-five —; thence north 30½° east one hundred and ninety feet; thence north 0° 35′ east six hundred & fifty-two feet; thence along bank of Red River eleven hundred & sixty-five feet to a point on east line of the ditch at its junction with Red River; thence south 19° 45′ west six hundred feet; thence north 70½ west one hundred & twenty feet to the willow tree aforesaid, containing thirty-five $\frac{18}{100}$ acres, situated in the parish of Caddo, Louisiana, and as shown and de-
170 scribed on map & survey of same made by W. R. Devoe, civil engineer, on file and of record in said cause.

It is further ordered that writs of possession issue in favor of plaintiffs & against defendants; and it is further ordered and decreed that plaintiffs have judgment against defendants for costs. It is further ordered and decreed that plea of *res adjudicata* be overruled.

Done, read, and signed in open court on this Aug't 4th, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

(Endorsed:) 80. R. N. Smith *et al. vs.* Geo. A. Turner *et al.* Judgment. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

R. N. Smith *et al.*
vs.
Geo. A. Turner. } No. 80.

Motion for a writ of *of* error to Supreme Court filed, & bond for a devolutive and suspensive appeal *be* fixed in the sum of fif-
171 teen hundred dollars.

Petition for a Writ of Error to Supreme Court of U. S.

United States of America,
5th Circuit, Western Dist. of La.:

To the hon. justices of the Supreme Court of the United States:

And now comes the Vicksburg, Shreveport & Pacific Railroad Company and complains that in the records and proceedings, and also in the verdict and rendition of judgment thereon, in a suit between Robert N. Smith *et als. vs.* Geo. A. Turner, in which suit the Vicksburg, Shreveport & Pacific Railroad Company is the substituted and real defendant, tried in the circuit court of the United States for said western district of Louisiana, at the term of court thereof held on the 31st day of July, A. D. 1886, and in which judgment was rendered against the said defendant railroad company on

said 31st day of July, A. D. 1886, a manifest error hath happened, to the great damage of the said defendant railroad company.

Wherefore they pray for the allowance of a writ of error
172 and such other process as may cause the same to be corrected by the Supreme Court as aforesaid allowed, & further pray for all orders and decrees necessary in the premises, and general and special relief.

(Sig.) FRANK B. STUBBS,
" WISE & HERNDON,
Att'ys for Vicksburg, Shreveport & Pacific Railroad Company.

Allowed.
(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: 80. U. S. circuit court, western district of Louisiana. Robert N. Smith *et als. vs.* Geo. A. Turner. Petition for a writ of error to Supreme Court of U. S. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

173 R. N. SMITH *et al.* *vs.* GEO. A. TURNER. } No. 80.

6 bills of exceptions filed.

Bills of Exceptions # 1.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.* *vs.* GEO. A. TURNER. } No. —.

Be it remembered that on the 29th day of July, 1886, when this case was called for trial, and which had just at that time been put at issue, the plaintiffs announced ready for trial and the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, announced not ready and moved for a continuance to the next term of the court, supported by an affidavit, which is annexed and made part hereof; in which affidavit the names of the witnesses and the facts to be proved by them is [are] fully set forth. The said application for continuance was overruled and disallowed and the defendant forced to trial by the court because the plaintiffs' counsel ad-
174 mitted, for the purposes of this trial, that if the persons mentioned in the motion for continuance were present they would swear to the matters stated in said motion, the plaintiffs reserving the right to make such objections to their testimony on such matters as are stated in said motion as the law would sustain; that if said testimony from said witnesses could be heard on the trial the court would hear it; otherwise not.

To which ruling defendant, by counsel, objected and tenders this

bill of exceptions, which is allowed and ordered — be filed and made a part of this record.

Aug. 4, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. Bill of exceptions # 1. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

175 *Bills of Exceptions* #2.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. —.

Be it remembered that on the trial of this case on the 29th day of July, 1886, the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, offered E. M. Smith, Thomas Phillips, E. Jacobs, as competent witnesses to prove that the land described and claimed by the plaintiffs in their petition under a certificate & patent from the State of Louisiana, and which is claimed by defendant under a grant from the United States Gov't to the State of La. to aid said railroad, and for which defendant prays judgment recognizing their ownership, &c., is worth the sum of ten thousand dollars; whereupon plaintiffs' counsel objected on the ground that the only part of said Silver Lake tract of 186 acres that was in controversey in this suit was the part alleged to be in the possession of the defendant Turner, and it was admitted by counsel for defend-
ant that said part or parcel of land was not worth exceeding
176 two thousand dollars.

The objection of the plaintiffs to the said evidence tendered by defendant was sustained by the court and the evidence or admission excluded for the following reasons, to wit:

The testimony of the above-named witnesses was not heard because the petition claims only the number of acres of land held by or in possession of Geo. Turner, the defendant; that the judgment in this case, if for plaintiff, could effect only the land held by Turner, and the claim set up by the defendant Turner or by the railway, whatever it may be, does not make this a suit for more than the number of acres of land claimed by the plaintiff, which is about forty acres, more or less, and is shown by admission of counsel not to be worth more than two thousand dollars.

If the suit involves title to the 186 acres of land, then the land to be passed on is worth about $10,000, as is admitted by counsel for plaintiff.

To which ruling defendant, by counsel, objected, and tend-
177 ers this bill of exceptions, which is accordingly allowed and ordered filed & made part of the record of this case.

Aug. 4, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A. Turner. #2 bill of exceptions. Filed Aug. 4, '86. E. J. Nolan, d'y cl'k.

Bills of Exceptions # 3.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. 80.

Be it remembered that on the 31st day of July, after the evidence had all been submitted and after argument of counsel, the court came to charge the jury, and said:

178 The court charged that if the jury find that the land in question was, on the 28th Sept., 1850, swamp and overflowed or such land as came under the description of the act in which the grant was made to the State and had not then been sold by the United States, it follows that title vested in the State; that shallow, non-navigable, fresh-water lakes and ponds, coming within the language of that act, were included in the grant; that the court would, by way of definition and illustration, say what the words used in the act mean, and it was for the jury to say whether the land in question is such land as is named in the act; that the character of the lands claimed by plaintiff to be swamp lands, such as are described in the act, can be shown by witnesses who have personal knowledge thereof; that such testimony is sufficient to show that the land sued for is or that it is not such land as is described in the act, 18495, of 1850.

179 It was shown, without any contradiction on the part of the defendant, that the land in question was surveyed in 1853 by the surveyor general of Louisiana; that W. W. Smith, the author of the plaintiffs' title, entered the said land, has a patent for it, and paid the State for it in 1853, after it was surveyed. These matters were not in any way disputed by defendant, and I charge you that the grant was a present grant, vesting title in the State; and if you find that the land comes within the language of the statute you will find for plaintiff. I charge you that nothing further was essential to make the title vest in the State; that in this case the failure to file in the General Land Office of the United States a list of the lands selected under the acts — 1849–'50 does not defeat plaintiffs' claim if you are satisfied from the evidence that the land is of such a character as the statute describes; that W. W. Smith having entered the land and paid the State for it in 1853, after it had been surveyed by the surveyor gen'l for Louisiana, it was not necessary in this case, to make his title good in law, for the Sec't'y

180 of Interior to have done anything further, or for a list of the land in question to be filed in his office or in any of the Departments.

To that charge and ruling defendant, by counsel, objected, and

tenders this his bill of exception, and prays that the same may be allowed.

Aug. 4th, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. R. N. Smith *et al. vs.* Geo. A. Turner. Bill of exception # 3. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, clerk.

Bills of Exceptions # 4.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
GEO. A. TURNER. } No. 80.

Be it remembered, on the 4th day of August, 1886, when
181 the counsel for pl'ffs herein had read the judgment in this case and offered it to the judge for his signature, the def'*ts*, by counsel, objected to the same being signed, for the reason that said judgment gives a minute description of a certain tract of land in the possession of Geo. A. Turner, when pl'ffs in their petition give no description of said land, nor does the map made by W. R. Devoe, surveyor, and filed in this suit give any such description of said land; which objection was overruled by the court for the follow [following] reasons, to which def't, by counsel, reserves this bill of exception and pray- that the same may be signed: Said objection was overruled because the map of the land in suit was made by W. R. Devoe, a surveyor, and filed in evidence, and the jury found in their verdict that the land to which plaintiff was entitled was in that survey and shown by the said map, which was received in evidence without objection Aug. 4, A. D. 1886; to which ruling by — counsel objected and tenders this bill of exceptions, which is accordingly allowed, ordered filed, & made part of the record of this case.

Aug. 4, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

182 Endorsed: No. 80. R. N. Smith *et al. vs.* G. A. Turner. Bill of exception # 4. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, cl'k.

Bills of Exceptions # 5.

In the U. S. Circuit Court for the Western District of Louisiana.

R. W. SMITH *et als.*
vs.
GEO. A. TURNER. } No. —.

Be it remembered that on the trial of this case, on the 29th of July, 1886, the defendant, The Vicksburg, Shreveport & Pacific Rail-

road Company, by counsel, offered to read to the court and jury and file as evidence material and competent in defence all the evidence that was taken & used on trial of this case of The State of Louisiana *vs.* W. W. Smith, No. — on the district court docket, parish
183 of Caddo, State of Louisiana, which is annexed hereto; to the introduction of which plaintiffs, by their counsel, objected, and objections sustained and the evidence excluded upon the following grounds, to wit:

Among the evidence that was offered by defendants in said case is the testimony of T. P. Hotchkiss, which, not being objected to, went to the jury by consent of counsel. The remaining evidence was excluded by the court because, as to the plaintiff'-, it was *res inter alios acta*, and it was not shown that the witnesses were either dead or other use [otherwise] disqualified.

To which ruling defendant, by counsel, objected and tenders this bill of exceptions, which is accordingly allowed and ordered filed & made a part of the record of this case.

Aug. 4, A. D. 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. Robert N. Smith *et als. vs.* Geo. A.
184 Turner. Bill of exceptions # 5. Filed Aug. 5, '86. (Sig.) J. W. Wheaton, cl'k.

Bills of Exceptions # 6.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.* *vs.* GEO. A. TURNER. } No. 80.

Be it remembered that on the 4th day of August, 1886, while this case was pending on an application for a new trial or rehearing, the defendant, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, entered a plea of prescription of ten years and asked that it by filed. Pl'ffs, by their counsel, objected, which was sustained by the court for the following reasons, to wit; to which ruling def't, by counsel, reserves this bill of exceptions, and prays that the same may be —.

The plaintiffs' counsel objected to the filing of the plea, and objection was sustained because, — the suit had been sued and a
185 verdict returned by the jury, the plea came too late.

Aug. 4, 1886.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsed: No. 80. R. N. Smith *et als. vs.* G. A. Turner. # 6. Filed Aug. 4, '86. (Sig.) J. W. Wheaton, clerk.

Extracts of Minutes of U. S. Circuit Court.

FRIDAY, *August 6th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et als.* *vs.* GEO. A. TURNER. } No. 80.

(On account of errors, see to-morrow's minutes.)

Ordered, That the court do now adjourn until to-morrow morning, Saturday, August 7th, 1886, at 10 a. m.

186 SATURDAY, *August 7th*, 1886.

Court met pursuant to adjournment, his honor Aleck Boarman, district judge, presiding.

R. N. SMITH *et als.* *vs.* GEO. A. TURNER. } No. 80.

Plea of prescription filed. Bond for writ of error filed.
Ordered, That the court do now adjourn until the next regular term.

Plea of Prescription.

In U. S. Circuit Court for the Western District of Louisiana.

ROBERT N. SMITH *et als.* *vs.* GEO. A. TURNER. } No. 80.

Now comes the real defendant herein, The Vicksburg, Shreveport & Pacific Railroad Company, by counsel, and pleads the prescription of ten years — pl'f'*t-*' right to recover, and aver- that they [it] have [has] been in the un-terrupted adverse possession of said lands described in the answer to the merits of this case by title translative of property for more than ten years.

187 Wherefore this company prays that this plea of prescription may be sustained and there be judgment thereon in their [its] favor, & further pray- for all orders and decrees necessary, and general relief.

(Sig.) FRANK B. STUBBS &
" WISE & HERNDON,
Att'ys for R. R. Co.

Endorsed: No. 80. U. S. circuit court. R. N. Smith *et als. vs.* Geo. A. Turner. Plea of prescription. Filed August 7th, 1886. E. J. Nolan, d'y cl'k.

188 *Bond for Writ of Error.*

Know all men by these presents that we, The Vicksburg, Shreveport and Pacific Railroad Company, as principal, and Sandford B. McCutchen, as surety, is [are] held and firmly bound unto John W. Wheaton, clerk of the United States circuit court for the western district of Louisiana, in the full sum of fifteen hundred dollars, to be paid to the said John W. Wheaton, clerk of the said 5th circuit court, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of August, in the year of our Lord one thousand eight hundred and eighty-sixth.

189 Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the western district of Louisiana, in a suit depending in said circuit court, wherein Robert N. Smith *et als.* — plaintiff- and Geo. A. Turner nominal & Vicksburg, Shreveport & Pacific Railroad Company real defendants, judgment was rendered against The Vicksburg, Shreveport & Pacific Railroad Company, defendant; and the said Vicksburg, Shreveport & Pacific Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert N. Smith *et als.*, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

190 Now, the condition of the above obligation is such that if the said Vicksburg, Shreveport & Pacific railroad shall prosecute this writ to effect and answer all damages and cost- if they fail to make this plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sig.) VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY, [L. S.]

(Sig.) Per WISE & HERNDON, [L. S.]
Att'ys-at-Law for said Co.

(Sig.) S. B. McCUTCHEN. [L. S.]

Sealed and delivered in the presence of—
—— ——.

Approved.
(Sig.) ALECK BOARMAN, *Judge.*

UNITED STATES OF AMERICA,
District of Louisiana.

Personally appeared Sandford B. McCutchen, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Caddo, in the State of Louisiana,

and is worth the full sum of fifteen hundred dollars over and *and* above all his debts and liabilities and property exempt from execution.

(Sig.) S. B. McCUTCHEN.

Subscribed and sworn before me this 7th day of August, 1886.

(Sig.) J. W. WHEATON,
Clerk & Commissioner U. S. Circuit Court,
District of Louisiana.

191 & 192 Endorsed: No. 80. United States circuit court, district of Louisiana. R. N. Smith *et als. vs.* Geo. A. Turner. Bond for writ of error. Filed August 7th, 1886. E. J. Nolan, d'y clerk.

193 Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 201 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial in the case of R. N. Smith *et als. versus* Geo. A. Turner *et als.*, No. 80 of the docket of the said court.

Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court this 20th day of September, A. D. 1886.

J. W. WHEATON, *Clerk.*

194 I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that John W. Wheaton, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of Shreveport, this 20th day of September, A. D. 1886.

ALECK BOARMAN, *Judge.*

I, John W. Wheaton, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that Aleck Boarman, whose name is signed to the foregoing certificate as United States judge for the western district of Louisiana, was at the time of signing said certificate and is now the judge of said court.

Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court, at the city of Shreveport, this 20th day of September, A. D. 1886.

J. W. WHEATON, *Clerk.*

195 UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judge of the circuit court of the United States for the western district of the State of Louisiana, Greeting:

Because that in the records and process and also in the rendering of judgment in a suit before you or some of you, between The Vicksburg, Shreveport & Pacific Railroad Company, a public corporation domiciled at Monroe, Louisiana, and citizen thereof, plaintiff in error, being substituted by the order of court for George A. Turner, original defendant in said suit, and Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, and William L. Smith, citizens of Shelby county, in the State of Kentucky, and John S. Smith, a citizen of the State of Colorado, defendants

196 in error, a manifest error has intervened, to the great damage of the said plaintiff in error, as in its complaint has been stated, and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, same being No. 80 on the docket of said circuit court, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the second Monday of October next, at Washington, being the present seat of the National

197 Government, that, the records and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Chief Justice of the said Supreme Court, at Washington aforesaid, this twentieth day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States one hundred and tenth.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. W. WHEATON, *Clerk.*

198 [Endorsed:] No. 80. Vicksburg, Shreveport & Pacific R. R. Co. *vs.* Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, John S. Smith. Writ of error. Filed Sept. 20th, '86. E. J. Nolan, d'y clerk.

199 United States of America to Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall, and Marine Duvall, to join and assist his said wife; Elizabeth W. Smith, William L. Smith, and John S. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on

the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and for the western district of Louisiana, wherein The Vicksburg, Shreveport & Pacific Railroad Company is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be
200 corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable the judge of the western district of the State of Louisiana this 28th day of September, in the year of our Lord one thousand eight hundred and eighty-six (1886).

ALECK BOARMAN, *Judge.*

201 [Endorsed:] No. 80. U. S. circuit court, 5th circuit, western district of Louisiana. Robert N. Smith *et als. vs.* Vicksburg, Shreveport & Pacific Railroad Company. Citation. Filed Oct. 1st, 1886. E. J. Nolan, d'y cl'k.

Rec'd a true and certified copy of within citation on this the 2nd day of Oct., A. D. 1886, and on same day served same on Land and Land, att'ys-at-law, at Shreveport, La., by handing to Alfred D. Land in person, a member of said firm, at his office, in said city.

J. C. JONES,
D'y Marshal.

Sworn to and subscribed before me this 2nd day of October, A. D. 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

E. J. NOLAN, *D'y Clerk.*

202 Know all men by these presents that we, Frank S. Bond, as president of the Vicksburg, Shreveport & Pacific Railroad Company, as principal, and Sandford B. McCutchen, as surety, are held and firmly bound unto Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith in the full and just sum of fifteen hundred dollars, to be paid to the said Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith, their attorneys, executors, administrators, or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a session of the circuit court of the
203 United States, fifth judicial circuit, holding sessions in and for the western district of Louisiana, in a suit depending in said circuit court, wherein Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall, joined and assisted by her said husband; Elizabeth W. Smith, William L. Smith, and John S. Smith are plaintiffs and The Vicksburg, Shreveport & Pacific Railroad Company is defendant, substituted by order of court for George A. Turner, original defendant, being No. 80 on docket of said circuit

court, judgment was rendered against the said Vicksburg, Shreveport & Pacific Railroad Company, defendant; and the said Vicksburg, Shreveport & Pacific Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert N. Smith, Elizabeth A.
204 Smith, wife of Marine Duvall, and said Marine Duvall to join and assist his said wife; Elizabeth W. Smith, William L. Smith, and John S. Smith, citing and admonishing them to be and appear at a supreme court of the United States to be holden at Washington on the second Monday in October next:

Now, the condition of the above obligation is such that if the said Vicksburg, Shreveport & Pacific Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sig.) FRANK S. BOND,
President of the Vicksburg, Shreveport & Pacific Railroad Company,
By WISE & HERNDON, *Att'ys.* [L. S.]
S. B. McCUTCHEN. [L. S.]

Approved.
(Sig.) ALECK BOARMAN, *U. S. Judge.*

205 [Endorsed:] No. 80. U. S. circuit court, 5th circuit, western district of Louisiana. Robert N. Smith *et als. vs.* Vicksburg, Shreveport & Pacific Railroad Company. Bond. Filed Oct. 1,'86. E. J. Nolan, d'y cl'k.

Personally appeared Sandford B. McCutchen, who, being duly sworn, deposes and says that he is surety on the foregoing bond; that he resides in Caddo parish, in the western district of Louisiana, and is worth the full sum of fifteen hundred dollars over and above all his debts, liabilities, and exemptions.

S. B McCUTCHEN.

Sworn to & subscribed before me this 23d day of September, A. D. 1886.

[Seal U. S. Commissioner, Western District La.]

J. B. SLATTERY,
U. S. Commissioner.

Endorsed on cover: W. Louisiana C. C. U. S. No. 276. The Vicksburg, Shreveport & Pacific Railroad Company, plaintiff in error, *vs.* Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; Elizabeth W. Smith, William L. Smith, and John S. Smith. Filed December 13, 1886.

Supreme Court, U. S.
FILED.
FEB 15 1890
JAMES H. McKENNEY,
CLERK.

Robert Clarke & Co., Printers, Cincinnati. [*February, 1890.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

The Vicksburg, Shreveport and Pacific Railroad Company,
Plaintiff in Error,

No. 276.] *vs.*

Robert N. Smith and Others,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD COLSTON,
Of Counsel for Plaintiff in Error.

Robert Clarke & Co., Printers, Cincinnati. [*February, 1890.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

The Vicksburg, Shreveport and Pacific Railroad Company,

Plaintiff in Error,

No. 276.] *vs.*

Robert N. Smith and Others,

Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

This action was brought by the defendants in error, as plaintiffs, in the Circuit Court of the United States for the Western District of Louisiana, against one Turner, as defendant, to recover from said Turner possession of a tract of about 40 acres of land, part of a larger tract containing about 186 acres. Turner was in possession as tenant of the plaintiff in error, and by his answer (Record, p. 3) vouched in his lessor, which thereafter conducted the defense.

From the record, it appears that the land in question was included within the limits of the grant made by the United States to the State of Louisiana, for the construction of railways, by act of Congress approved June 3, 1856,

and was conferred upon The Vicksburg, Shreveport and Texas Railroad Company by the State of Louisiana by acts of the general assemby approved June 3, 1856, and March 11, 1857. The act of Congress referred to was one of several like acts granting lands to the several states, in aid of the building of railways, and provided (11 Statutes at Large, p. 19, sec. 4):

"That the lands hereby granted to said state shall be disposed of only in the manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections and included within a continuous length of twenty miles of said roads may be sold; and when the governor of said state shall certify to the Secretary of the Interior that any twenty continuous miles of said roads are completed, then another like quantity of land hereby granted may be so sold; and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States."

The Louisiana acts transferring to the Vicksburg, Shreveport and Texas Railroad Company so much of the grant as pertained to the route from the Mississippi river *via* Shreveport to the Texas boundary imposed no new terms. The plaintiff in error succeeded to the title under foreclosure of a mortgage made by The Vicksburg, Shreveport and Texas Railroad Company. (Record, p. 13.)

The tract known as "Silver Lake," containing about 186 acres, of which the lands in dispute here are a part, was what is described in the table on page 42 of the Record as "Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of Sec. 31, Town 18, Range 13, containing 178.80 acres," which were approved to the predecessor, in title of plaintiff in error, October 7, 1859, and re-approved January 10, 1874. (Record, p. 22, and also p. 43.)

The claim of defendants in error is (Record, p. 1) that

the lands were "swamp lands," and passed to the State under the Swamp Land Acts of 1849 and 1850, and that they were thus excepted from the act of June 3, 1856, under section 1 thereof.

The Record (p. 56) shows that, by act approved April 30, 1853, promulgated June 23, 1853 (Record, p. 57), the register of the (state) land office was empowered to sell the "shallow lakes" belonging to the state, and that under that act the shallow lake known as "Silver Lake" was patented to Wm. W. Smith, the ancestor of defendants in error (Record, p. 57). Under this patent, defendants in error claim, and, upon the sufficiency of their title, the whole case, being in substance an action of ejectment, must turn.

I.

We contend:

First. That "Silver Lake" is not and was not swamp land, within the meaning of the Swamp Land Acts of 1849 and 1850;

Secondly. That if it was not swamp land it did not become the property of the State of Louisiana until the act of June 3, 1856, and then only subject to the trusts of that act;

Thirdly. That the patent of February 24, 1855, to W. W. Smith, under which defendants in error claim, was not for "*swamp land*," but only for a "*shallow lake*," and can not be supported as for swamp land;

Fourthly. That the patent to W. W. Smith, of February 24, 1855, was canceled and annulled by the judgment in the case of the *State of Louisiana* v. *W. W. Smith*, in the District Court for the Eighteenth Judicial District, Parish of Caddo, Louisiana, entered November 24, 1860, and found at page 65 of the Record in this cause; and that

it can not be relied upon as evidence of any title whatsoever; and

Fifthly. That the plaintiff, having been in open and notorious adverse possession of the lands in question for more than ten years, its title is complete by prescription under the laws of Louisiana.

The petition of the defendants in error (Record, p. 2) avers that they rely upon the patent to their ancestor, W. W. Smith, of 1855, as confirmed by the acts of Congress of March 2, 1855, and March 3, 1857, respectively. But the Louisiana act, under which Smith bought, did not assume to order the sale of any swamp lands. It authorized (Record, p. 56, No. 284) the register of the land office at Baton Rouge—

"to sell the shallow lakes in this State, the area of which has been ascertained by survey, etc. . . . . Provided said sale shall not be made until the lands have become the property of the State, and been legally surveyed, and the surveys recognized by the State."

Thus the authority of the register to make the sale and issue the patent to W. W. Smith, under which defendants in error claim, was conditioned on the existence of the facts required by the act. And disregarding for the moment the evidence adduced in the case of *State of Louisiana* v. *Smith*, the admission of which was refused by the court below in the case at bar (see Bill of Exceptions No. 5, Record, p. 85), it is plain that all these questions were at issue in that case, and were decided adversely to the claim of the patentee by the final judgment. (Record, p. 65.)

The history of the matter as disclosed by the present record is as follows:

By act approved April 30, 1853 (Record, p. 56), the

General Assembly of the State of Louisiana authorized the Register of the Land Office at Baton Rouge to

"sell the shallow lakes in this State the area of which has been ascertained by survey and which are susceptible of being reclaimed wholly or in part by draining and leveling: Provided, that this act shall not apply to any navigable lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State."

At the date of the passage of the act statutes had no binding effect until promulgated in the manner prescribed by law. (Civil Code of Louisiana, Preliminary Title, Chapter 2, Articles 1 to 5.) The act in question, so far as it was an authority to the Register of the Land Office, did not become operative until three days after the promulgation (Civil Code, idem, Article 6). This promulgation was made in the official state paper on the 23d day of June, 1853 (Record, p. 57), but in the meantime, on the 14th of May, 1853, W. W. Smith, the ancestor of defendants, assumed to purchase, and received a certificate (see Certificate No. 1, Record, p. 57) for,

"The shallow lake known as Silver Lake in the Parish of Caddo, . . . containing one hundred and eighty six and 57-100 acres, at the rate of one and 25-100 dollars per acre, amounting to two hundred and thirty-three 31-100 dollars,"

from the Register of the Land Office, and thereafter, on February 24, 1855, a patent (see No. 1,383, Record, p. 64) was issued to him for the tract.

On December 3, 1857, Hinton Smith, the District Attorney for the Eighteenth Judicial District, Parish of Caddo, filed his petition (Record, p. 47) in the District Court of the parish praying that the certificate of entry

and the patent to W. W. Smith might be declared null and void, and said Smith ordered to surrender them to the state authorities to be canceled. This petition alleges as the grounds for the action (Record, p. 48), that Smith's certificate of entry had been with his knowledge canceled by Renshaw, the register, on June 10, 1853, less than a month after it had been made, presumably because Renshaw had then discovered his lack of authority under the act. The petition states (Record, p. 48) three other grounds, namely:

First. That the law under which the entries were made had not been promulgated at the date of the entries.

Secondly. That the lakes (Silver Lake and Cross Lake) had not at the time of the entries and up to the bringing of the suit been legally surveyed, nor had the surveys been recognized by the State.

Thirdly. That the patent to Silver Lake had been issued, was issued by the register in error of the fact that the law had not been promulgated, and also in error of the fact that the entry had been canceled before the promulgation of the law.

On March 30, 1858, W. W. Smith filed exceptions (Record, p. 50) to the petition, pleading a want of authority in the district atttorney to bring the action, which were sustained, the petition dismissed, and appeal taken by the State to the Supreme Court, where the judgment of dismissal was, on July 23, 1858, reversed, and the cause remanded for trial (see opinion and judgment of the Supreme Court of Louisiana, pp. 71 and 72 of the Record).

Pending a trial, the district attorney suggested to the District Court by petition filed February 14, 1859, the death of the defendant, W. W. Smith, and the appointment of Jno. W. Smith as his administrator, and prayed that

the administrator might be cited to appear and defend the action. The administrator accordingly appeared and answered, denying the allegations of the petition, and claiming to be the owner of the land and of all the right and title of the State of Louisiana thereto (Record, p. 52). Thereafter a trial was had before a jury which, on November 12, 1860, found for the plaintiff, and directed that the certificate and patent should be annulled and delivered up (Record, p. 69), and though motion for a suspensive appeal was made and granted and bond filed (Record, p. 70), no appeal was ever perfected, and the verdict and judgment stand unreversed.

From the papers filed in evidence by the plaintiffs on the trial of the exception and plea filed by the railroad company (Record, p. 9), it appears that all the plaintiffs, as well as James F. Smith, in whose right the claim of Elizabeth W. Smith seems now to be made, were, at the time of the death of W. W. Smith, the appointment of Jno. W. Smith as his administrator, and during all the proceedings in the case of *State of Louisiana* v. *Smith*, non-residents of Louisiana. This being so, the administrator was by the law of Louisiana the person qualified to stand in judgment for them in respect of all matters affecting the estate of W. W. Smith and their interest therein. Indeed, all actions that could have been brought against the intestate must be brought against his administrator in such a case as happened—that of the heirs residing beyond the jurisdiction of the Louisiana courts. And the action of *Louisiana* v. *W. W. Smith* having been brought in his lifetime was upon his death properly revived against his administrator. This also explains why the State in reviving the action did not make parties by name the heirs of Smith. The petition of revival (Record, p. 52) prays for "service upon all other legal repre-

sentatives," but it does not appear that process ever issued to any other than the administrator, who appeared and defended, and suffered a judgment against him. The heirs being non-residents of Louisiana, the administrator was by law their representative, since it is clear that if the suit must have been brought against him had W. W. Smith died before it was begun, by the same token it was properly revived against him when his intestate died pending his trial.

The Record (p. 67) shows that in the case of *Louisiana* v. *W. W. Smith*, the death of the defendant was suggested on October 26, 1858, and that a petition for revival was filed February 14, 1859 (Record, p. 53), while the administrator's answer was filed April 29, 1859. The record also shows (p. 73), that on October 25, 1858, John W. Smith applied for letters of administration on the estate of W. W. Smith, deceased, and therein alleged the residence of all the heirs to be in the State of Kentucky. The heirs are mentioned by name in the petition (Record, p. 27) of one John Brown to be appointed tutor or guardian of those under age, and the residence of all of them is averred to be in Kentucky. Some of the heirs seem subsequently to have disappeared; at least they are not accounted for, and the court below found that the defendants in error in the case at bar were the sole heirs of W. W. Smith, and the judgment allotted to them all of W. W. Smith's interest in the land in controversy.

Admitting now, for the moment, that the state became invested with the title to "Silver Lake," under the Swamp Land Acts of 1849 and 1850, subject only to identification, can it be contended that a judgment of the State court setting aside the sale, entry, and patent left any thing in the State's vendee? The judgment in *Louisiana* v. *W. W.*

Smith, annulled Smith's patent without qualification. He did not claim, nor do defendants claim, any other title than such as the patent gave. If W. W. Smith had bought from the State under general laws authorizing the sale of swamp lands, and not under the particular act of 1853, that would have been available to him as supporting his patent on general grounds. But, certainly, whatever title W. W. Smith had was by virtue of his certificate of entry and the patent issued to him in pursuance thereof. Both these were set aside and annulled at the suit of the State. Yet, nearly thirty years later, the heirs of the patentee rely upon this same canceled patent, and are allowed to recover under it as if there had been no validity in the former judgment.

The theory of the defendants in error is, that the patent of W. W. Smith was for swamp land, and that, thus, any informality or defect was cured by the curative acts passed by Congress March 2, 1855, and March 3, 1857. If any title or interest in "Silver Lake" had been left in the estate of W. W. Smith after the judgment annulling and canceling his patent, it might be true that the acts of Congress confirmed it. But it could not have been intended by Congress that the acts should vest a good title in one who had no color of title or right of occupancy. It is true that the curative acts were passed before the suit of *Louisiana* v. *Smith* was brought, but, as the result of that suit determined that W. W. Smith's patent had been wrongfully issued and was void, there was nothing upon which the curative provisions of the acts could operate. Out of nothing, nothing is made, even by multiplication.

The act of March 2, 1855, is found in 10 Statutes at Large, 634. It provides:

"That the President of the United States cause pat-

ents to be issued . . to the . . purchasers . . or locators who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the state or states, as provided for by the second section of the act approved, September twenty-eight, eighteen hundred and fifty . . . . . Provided, that in all cases where any state, through its constituted authorities, may have sold or disposed of any tract . . of said land to any individual . . prior to the entry, sale, or location of the same . . no patent shall be issued by the president for such tract . . of land until such state, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior," *etc.*

The act of March 3, 1857 (11 Stats. L. 251), merely confirms the Swamp Land Acts of September 28, 1850, and March 2, 1849, and continues in force the act of March 2, 1855, "so far as the same (swamp lands) shall remain vacant and unappropriated." And it could not apply to "Silver Lake," for the reason, if for no other, that "Silver Lake" was at that time neither "vacant" nor "unappropriated," having been by the act of June 3, 1856, granted to the State of Louisiana for the purpose of aiding in the construction of railroads. (See letter of S. J. Kirkwood, Secretary of the Interior, Record, p. 22.) And, as appears by Secretary Kirkwood's letter (Record, p. 22), as well as by the certificates of McFarland, Commissioner (Record, p. 4), and Drummond, Commissioner (Record, p. 42), approved by the Acting Secretary of the Interior (Record, p. 43), the whole tract, of which the land in question here is a part, was approved to our predecessor in title in 1859, and reapproved in 1874. In the table "Silver Lake" is the tract thirdly described as "lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 of section 31, township 18, range 13, containing 178.80 acres."

It nowhere appears that Smith's heirs ever complied

with the formalities prescribed by these acts; that the State of Louisiana ever released her claim upon the tract; or that the United States ever recognized any title in Smith's heirs. We do not perceive how these acts can help the defendants in error. They confirm titles, but do not give title where none before existed.

It is to be observed that in *Louisiana* v. *Smith*, the precise question raised by the petition in the case at bar was litigated, namely, whether "Silver Lake" was swamp land and had been bought by Smith as such.

The court below refused to admit the record of the evidence in *Louisiana* v. *Smith*, on the ground that it was *res inter alios acta*. (See Bill of Exceptions No. 5, Record, pp. 85 and 86.) In this we think it clearly erred, since, as we have shown, the administrator represented all the parties who might be interested in the estate, including the defendants in error here, and it was competent for the plaintiff in error to show that in the cause in which Smith's patent was set aside, the question, material in the case at bar, was litigated and decided adversely to the claims of defendants in error. The evidence to which we refer is found in the Record, pp. 54–64.

This court has in numerous cases decided that a fact or controversy once decided by a competent tribunal can not be re-examined by another court of concurrent jurisdiction in a suit between the same parties or their privies. See

Bank v. *Beverley*, 1 Howard, 134.
Aspden v. *Nixon*, 4 Howard, 467.
Cromwell v. *County of Sac*, 94 U. S. 351.

We have seen that, in *Louisiana* v. *Smith*, it was determined that the certificate and patent on which defend-

ants in error rely were wrongfully issued, and that they were therefore ordered to be annulled and canceled. In the cause, too, the question whether "Silver Lake" was swamp land was litigated, and, it must be presumed, decided adversely to the defendant. To this cause defendants in error were parties duly served and appearing by the lawful representatives of their title, at first by their ancestor in person, and later by his administrator. All the parties in the case at bar claim through a common source of title, the plaintiff in error from the State of Louisiana as grantee of the United States under the act of June 3, 1856, and the defendants in error from the State of Louisiana as grantee from the United States under the Swamp Land Acts. As to "Silver Lake," the title of defendants in error was litigated and decided adversely to them in the case of *Louisiana* v. *Smith*, and the successful party, having established the invalidity of the very claim urged in the case at bar, caused the lands to be certified and approved to the plaintiff in error's predecessor in title as part of those granted to it by the United States under the act of Congress of June 3, 1856. We have thus on one side of the present controversy the plaintiff in error claiming the title of the State of Louisiana, and on the other the defendants in error claiming title from the State of Louisiana under a patent that has been judicially declared void in a suit between their grantor and their representative. Do not these circumstances bring the case at bar within the purview of *Cromwell* v. *County of Sac*, 94 U. S. 351? On p. 352 it is said:

"In considering the operation of this judgment (a judgment rendered in a former action), it should be borne in mind, as stated by counsel, that there is a difference be-

tween the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. . . . . .

"Such demand or claim having passed into judgment, can not again be brought into litigation between the parties in proceedings at law upon any grounds whatever."

In the case at bar, the defendants in error must stand or fall solely by virtue of their own title; no informality or defect in the title of plaintiff in error can avail them. They rely upon a patent which has been judicially declared invalid. If the defendants in error are in privity with W. W. Smith, and plaintiff in error is in privity with the State of Louisiana, and of neither can there be doubt, the judgment in *Louisiana* v. *Smith* is a bar to the present action, and plaintiff in error ought to have had judgment below.

It appears, also, by Bill of Exceptions No. 5 (Record, p. 84), that the court below instructed the jury,

"That shallow, non-navigable, fresh-water lakes and ponds, coming within the language of that act (the Swamp Land Act of September 28, 1850, 9 Stats. Large, p. 519), were included in the grant."

It seems to us that this was either an instruction that shallow lakes are swamp lands within the act, or else it quite begged the question. If it was a positive instruction, it was erroneous, since, as the cases we have cited

demonstrate, by the case of *Louisiana* v. *Smith* and the judgment therein, the defendants in error were estopped from asserting that "Silver Lake" was swamp land. It also illustrates how seriously plaintiff in error was prejudiced by the refusal of the court (see Bill of Exceptions No. 5, Record, p. 85) to admit the evidence in *Louisiana* v. *Smith*, which would have shown specifically that the question of the character of "Silver Lake" was raised and tried in that case.

While the cause was pending in the court below on application for a new trial, and before judgment, the plaintiff in error entered a plea of the statute of limitations—adverse possession for more than ten years, which the court refused leave to file. (Bill of Exceptions No. 6, Record, p. 86.) In this we think the court erred.

No judgment had been entered and a motion for a new trial was pending, and under the case of *Retzer* v. *Wood*, 109 U. S. 185, it was in time. In that case, the court, at p. 187, say:

> "It is well settled, that, in the absence of a contrary rule established by statute, a defendant who desires to avail himself of a statute of limitations as a defense, must raise the question either in pleading or on the trial or before judgment."

Citing 94 U. S. 76, and 105 U. S. 640, both of which hold that the defense can not be raised for the first time in the appellate court.

Furthermore, the plea offered should have been received because it was no more than a formal presentation

of the fact of adverse possession, which had been in substance pleaded in the answer and shown by the proof.

The petition alleged that Turner, the tenant of the railroad company, was in possession, and the answer undertook the defense, and alleged that (Record, p. 78):

> "The land described in plaintiff's petition . . . . was acquired by said (The Vicksburg, Shreveport and Texas) railroad company, and duly certified or patented as belonging to said company by the U. S. Government, and which has been legally sold and transferred by said railroad company to defendant company, and deed duly recorded."

It nowhere appears that defendants in error were ever in possession of the land in question, either by themselves or by their representatives. The proof shows (Record, p. 21 and elsewhere) that the lands variously known as "Silver Lake," or as lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of section 31, township 18 north, range 13 west, were certified to The Vicksburg, Shreveport and Texas Company in 1859, and re-approved in 1874. It shows, too, that The Vicksburg, Shreveport and Texas Railway, and all its property, came to plaintiff in error by deed dated June 6, 1881, found at p. 24 of the Record. Thus no possession is proved as to the lands except that of plaintiff in error by its tenant. No one else appears ever to have been in possession, and this possession must be deemed to date from 1874 at least, more than eleven years before the filing of the petition in the case at bar in November, 1885. Since then, by the pleadings, aided by the evidence at the trial, the question of adverse possession is substantially raised, it was, we contend, error in the court to refuse to allow the formal plea to be filed at any time before judgment.

II.

This case was before this court at the October Term, 1886, upon motion to dismiss, and was continued for hearing with the case on its merits (122 U. S. 638).

The ground of the motion to dismiss was want of jurisdiction in this court, for that the record did not show the matter in dispute to be of the sum or value of $5,000.

It appears, by Bill of Exceptions No. 2 (Record, p. 83), that the plaintiff in error, defendant below, offered to prove that the land described and claimed by the plaintiffs in their petition was worth the sum of $10,000, which the court refused to allow, solely, as it appears, on the ground that at some time plaintiff in error's counsel had admitted that the thirty-five or forty acres for which judgment was rendered were worth about $2,000. This was done notwithstanding that the answer of the railroad company (Record, p. 78) alleged "that the land described in plaintiff's petition, and sought to be recovered in this suit, is worth at least $10,000."

In *Parker* v. *Morrill*, 106 U. S. 1, it was decided that it must appear, by the record or otherwise, that the value of the matter in dispute exceeds $5,000. The opinion (Id., p. 2) shows that the phrase "by the record," is used in its widest sense. In that case, the record did not show what the value was, and no attempt was made to supply the defect by affidavit or otherwise. And this court, finding that the fact of value did not affirmatively appear, dismissed the case.

The existence of jurisdiction is, when put in issae, a question to be determined by this court, not by the court below; and, for that purpose, the court looks to the record,

or to such other evidence as may be received, to supply its deficiencies.

Where the judgment is for money, or for something capable with the aid of the record of estimation in money, it will be the measure of the value of the matter in dispute as against the party appealing.

New York R. Co. v. *National Bank*, 118 U. S. 608.

In the case at bar, the judgment (Record, p. 80) is for the possession of certain lands therein described, and no value is attributed to them, so that we are constrained to look to the rest of the record.

As has been said, the answer of the plaintiff in error (Record, p. 78) alleges "the value of the land . . . sought to be recovered," to be at least $10,000. The defendants in error will hardly be heard to say that the land described in the judgment is not that "sought to be recovered," and as the judgment is against plaintiff in error, it is plain that its answer alleges the value of the matter in dispute, *i. e.*, of the land described in the judgment, to be at least $10,000.

How do defendants in error meet this? They say that, as appears by Bill of Exceptions No. 2 (Record, p. 83), the court below found the value to be $2,000 upon an admission of counsel. But it is no part of the duty of the court below to find a jurisdictional fact for this court. Its duty was ended when it allowed evidence to be adduced from which this court could find the fact for itself. Moreover, the admission of counsel referred to was, at most, only evidence capable of being supplemented and explained, and, if competent at all, was so only as testimony that might have been adduced by defendants in error to controvert the proof offered by plaintiff in error.

If the action of the court below can be sustained, there is no method by which a litigant may have a decision of this court to a question of its jurisdiction.

It is only necessary for the court below to form an opinion upon that point, insert it in the record in the form of a refusal of an offer of evidence, and the thing is done. If the court below erred in rejecting plaintiff in error's evidence of value, then the value is that alleged in the answer, "at least $10,000," and the jurisdiction of this court is complete.

We believe that, in the absence of any counter-proof or allegation, the averment of the answer would have been sufficient without the testimony offered by plaintiff in error. But, when evidence was offered, the court below said, in effect:

"No, you shall adduce no proof. Although the petition describes no land by metes and bounds, asks for no specific number of acres, and assigns no value to the land claimed. And although the answer avers the value to be at least $10,000.00. Yet I will hear no evidence, nor allow any to go into the record. I heard counsel for defendant say the land was worth about $2,000.00. He may or may not be familiar with land values; that is immaterial. He may or may not have known the land in dispute. Yet his admission satisfies me, and is conclusive. The land is not worth more that $2,000.00, the judgment of this court will be final, and the Supreme Court will have no jurisdiction to hear an appeal from it."

We contend that, having in view the allegation of the answer, it sufficiently appears by the Record that the value of the matter in dispute is at least $10,000. And we submit that, if the court below had been of opinion that the averment of the answer did not of itself establish the value, its course in rejecting evidence offered by the

defendant (plaintiff in error here), and finding a value of its own motion was erroneous, and should be disregarded. The existence *vel non* of jurisdiction in this court is a question for the determination solely of this court, and if the court below had conducted an enquiry into the value, the facts elicited, if properly brought into the record, might have sufficed to enable this court to determine whether jurisdiction existed. But the court received no evidence except from the defendants in error, and that in the form of an admission of counsel. It refused to hear any thing from the plaintiff in error. Can it be said that there has been an opportunity to be heard upon the question?

In *Leigler* v. *Hopkins*, 117 U. S. 684, affidavits were received to contradict a finding by the court below as to value, although that case had been tried to a judge without a jury, and a finding of facts had been made, among which was one as to value.

The case at bar being in ejectment, no sum of money by which to measure the value of the matter in dispute was demanded by the plaintiffs. It is obvious that the value of the matter in dispute is measured by the amount of the damage that the appellant will suffer in case the judgment be affirmed. Here the defendant in such case will lose its land. What, then, is the value of the land?

The court will look to the whole record. (*Webster* v. *Insurance Company*, 110 U. S. 386; *Bradstreet Company* v. *Higgins*, 112 U. S. 227.) Looking into the record, we find that the value is averred in the answer to be $10,000, or more; that this is not any-where denied; and that the only intimation to the contrary is a statement by the court below that it heard defendant's counsel say that the land was worth $2,000.

As to the jurisdiction, as shown by the record, we in-

sist that the averment of the answer is conclusive, for the reason that the only other statement concerning it is part of an erroneous reason given by the court below for making an erroneous ruling, and must be disregarded.

In the case of *Evans* v. *Troy*, 97 U. S. 1, this court held that:

> "If jurisdiction is invoked because of the collateral effect a judgment may have in another action, it must appear that the judgment conclusively settles the rights of the parties in a matter actually in dispute, the sum or value of which exceeds the required amount."

Under this rule, also, we ask that this court take jurisdiction of the case at bar. It is undisputed that the land specifically described in the judgment of the case at bar is part of a larger tract, called "Silver Lake," and that the value of the whole tract is at least $10,000. The whole tract is included in the Smith patent and in the certifications to the plaintiff in error of 1856 and 1874. The title to the whole depends upon the same questions as to the title to the part. The affirmance of the judgment herein will settle against plaintiff in error the main question—the present validity of the Smith patent.

We ask that the motion to dismiss be overruled, that the judgment of the court below be set aside, and that a new trial be ordered.

Respectfully submitted.

EDWARD COLSTON,

Of Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
FILED.
APR 1 1890
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

The Vicksburg, Shreveport & Pacific Railroad Company,

No. 276. Plaintiff in Error,

—VS.—

Robert N. Smith and Others,

Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

The Vicksburg, Shreveport & Pacific Railroad Company,

No. 276. **Plaintiff in Error,**

—VS.—

Robert N. Smith and Others,

Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

ON MOTION TO DISMISS.

The plaintiffs in the Court below, defendants in error here, allege that they are owners of a certain tract of land known as Silver Lake, in Caddo parish, Louisiana, containing an area of 186.57 acres, and is illegally withheld from them. A part of it, about 40 acres, being in the possession of Geo. A. Turner.

Turner declared that he was in possession as tenant of the plaintiff in error, and was thereafter discharged. La. Code of Practice, Art. 43.

The plaintiff in error being thus called in, made answer denying that defendants in error were the owners of the said Silver Lake tract, and reconvened claiming ownership in itself.

It is admitted that this tract of land is worth at least $10,000.

It is an irregularly shaped tract of land, and as its name indicates, was formerly a lake, if in fact it may not yet be so considered, since it is covered with water to a depth of from one to ten feet during the flood period in Red river.

It is this tract of land that plaintiff in error possessed through its tenant Turner. True his fence did not enclose over 36 acres, as shown by the survey made after the suit was instituted, but the extent of possession is a mixed question of law and fact.

The defendant in this suit below had as much corporeal possession of the entire tract, though a part only was enclosed, as any planter has of the outlying woodland that is a part of his plantation. 37 La. An. 753.

Turner was therefore in legal possession of the whole tract for his lessor, and the defendants in error, after describing this entire tract and alleging ownership, pray to be decreed owners of that in possession of the said Turner.

We therefore conclude that the plaintiffs below, put at

issue their title to the whole tract. In fact, the title to a part carries with it necessarily title to the whole.

II.

But if we are in error as to the amount involved in the demand made by the plaintiffs below, then we hold that the reconventional demand of defendants below, put at issue the entire Silver Lake tract, worth at least $10,000. And the verdict of the jury and judgment thereon of the Court below, being in favor of the plaintiffs, was without formal language to that effect, a rejection of the reconventional demand, and this Court has jurisdiction to examine into the judgment thereon.

The demand which the defendant institutes in consequence of that which the plaintiff has brought against him, is termed a demand in reconvention. La. Code of Practice, Art. 374.

In order to entitle the defendant to institute a demand in reconvention, it is requisite that such demand, though different from the main action, be, nevertheless, necessarily connected with, and incident to, the same. * * *

Art. 374.

The Supreme Court of Louisiana has decided, in a number of cases, that an appeal will lie from a judgment on a demand in reconvention, when the sum claimed in reconvention is sufficient to give jurisdiction to the Appellate Court, though the original demand be less than

the amount of the appellate jurisdiction of that Court.

3 R. 387.

10 R. 438.

15 A. 521.

17 A. 199.

33 A. 657.

41 A. 747.

The reconventional demand is a separate and distinct demand from that of the original plaintiff.

In case of Millandon et al. vs. McDonough, 18 L., page 424, in which the plaintiff had not put his title at issue, the Court says: "He (defendant) comes up to the mark, sets up title in himself, and institutes a reconventional demand, asking that the property be adjudged to him.

"This reconventional or cross action, which is by the Code of Practice consolidated with the principal or original suit, is clearly petitory."

We are in the attitude of plaintiffs on the reconventional demand, the judgment thereon being against us, and the amount involved, exceeding $10,000 in value, this Court has jurisdiction.

ON THE MERITS.

The defendants in error allege that the land in question passed to the State of Louisiana under the Swamp Land Acts of 1849 and 1850, and from the State to their

ancestor, W. W. Smith, by a certificate of entry from the constituted authorities, of date 14th May, 1853, upon which a patent issued February 24, 1855.

Under the settled jurisprudence of Louisiana, the plaintiff in a petitory action, can recover only on the strength of his own title, and not the weakness of defendants; not even in the absence of any title, but that based on possession. We hold:

First—That Silver Lake was not in 1853 swamp land, and has not been so regarded by either the State or Federal authorities.

Crenshaw, register of the State Land office at the date of the entry, says: "The land was never claimed as 'swamp land' or sold as such." (Record, p. 62.)

Haralson, acting register in 1856 and 1857, says: "There has never been any selection as 'swamp' of said lakes, to my knowledge, nor is there any evidence on file in the office to that effect. Said lakes are considered by me to be the property of the United States, and not of the State of Louisiana." (Record, p. 62.)

The testimony of Register Lobdell was taken under commission in this case. He says: "The records of this office do not show that section 31, T. 18, range 13 and 14 west, were ever selected as swamp land." (Record, p. 8.)

The Secretaries of the Interior from 1858 to the pres-

ent time, have considered the character of the land in question, and have uniformly held not to be "swamp" land under the meaning of Acts 1849 and 1850. See report of Secretary Kirkwood. (Record, p. 21.)

Upon application for a continuance to take the testimony of Sparks and Stocklager, commissioner and assistant commissioner of the General Land Office, and M. D. Brainard, to prove that the records of the Land Office show that the State of Louisiana has never claimed "Silver Lake" as swamp land under the grants of 1849 and 1850, but that it was approved to the State of Louisiana October 7, 1856, under the grant in aid of the construction of the Vicksburg, Shreveport and Texas Railroad. The said application for a continuance was overruled, because the counsel for the defendants in error admitted that the said persons, if present, would so testify. (Record, pp. 76 and 82.)

Second—That even if "swamp" land within the meaning of Acts of 1849 and 1850, not having been properly identified and selected as such by the State of Louisiana prior to the grant to the State for the construction of railways by act of Congress approved June 3d, 1856, it did not become vested in the State until then, and subject to the trusts of that act. 7 Otto, 375, and cases cited.

Third—That if Silver Lake passed to the State of

Louisiana absolutely and unconditionally as "swamp" land, under Acts of 1849 and 1850, then it did not pass from the State to W. W. Smith.

It is true that W. W. Smith made an entry on the land and received a certificate therefor from the Register of the Land Office of date May 15th, 1853. At that date the Act of the Legislature authorizing the sale of "shallow lakes" had not been promulgated, and therefore had not become a law.

Accordingly Smith's entry was canceled, of which he was promptly notified, and the money paid by him for the land tendered back by the State, which he refused to accept.

Upon these facts a jugdment was rendered against Smith, in a suit brought by the State of Louisiana against him, in the District Court of Caddo parish, Louisiana, annulling and canceling both the certificate of entry and the patent issued to him 24th February, 1855. (Record, p. 65). We direct the attention of the Court to bill of exception No. 5 (Record, 85) taken to the refusal of the Court to receive the evidence taken on the trial of the said case of the State of Louisiana vs. W. W. Smith, the refusal being based on the ground that "it was res alios acta."

The record shows that after the suit was filed Smith died; his succession was opened by the appointment of an

administrator, who under Louisiana law represents the succession fully, and can stand in judgment for or against the succession, in any matter in which it has an interest.

The administrator put the case at issue, and the proceedings were thereafter conducted regularly against him.

The administrator was the representative of the creditors and of the heirs, and the testimony was taken in a proceeding in which they were parties through their representative.

The testimony was improperly rejected, and therefore resulted to the prejudice of defendant's case before the jury.

We think we have shown that the defendants in error have no sufficient title to the lands in controversy to enable them to recover against a mere possessor, but we go further and say that the plaintiff in error has a title to the said land good against the world.

The history of our title is fully explained in the brief filed by our associate, Mr. Colston, and it is not necessary to recapitulate.

We wish, however, to direct the attention of the Court to a mode of acquiring real property in Louisiana by possession during a fixed time.

Prescription is a manner of acquiring the ownership of

property, or discharging debts, by the effect of time, and under the conditions regulated by law. La. Civil Code, Art. 3457.

The prescription by which the ownership of property is acquired is a right by which a mere possessor acquires the ownership of a thing which he possesses by the continuance of his possession during the time fixed by law. Art. 3458.

He who acquires an immovable in good faith and by a just title, prescribes for it in ten years. Art. 3478.

To acquire the ownership of immovables by prescription four conditions must concur:

1. Good faith on the part of the possessor.

2. A title which shall be legal, and sufficient to transfer the property.

3. Possession during the time required by law, which possession must be accompanied by the incidents hereafter required.

4. And finally an object which may be acquired by prescription. Art. 3479.

The articles ot the Civil Code immediately following explain and interpret the last quoted article.

It must be presumed that the plaintiff in error and its vendor had possession at least from 1874, and by title translative of property the prescription of ten years applies.

It was error on the part of the Court to refuse the plea of prescription tendered by the plaintiff in error (Record, p. 86). Prescription may be pleaded in every stage of a case, even on the appeal, but it ought to be pleaded expressly and specially before the final judgment. C. C., Art. 3464.

For these reasons the motion to dismiss should be overruled, the judgment of the Court below set aside, and the case remanded for a new trial.

Respectfully submitted,

WISE & HERNDON,

Of Counsel for Plaintiff in Error.

Frank P. Stubbs
counsel for plff in error

This case ought to be remanded for the further reason that since the trial in the Court below, the plaintiffs in error have discovered that the Supreme Court of Louisiana entered on the 11th August, 1869, a decree dismissing the appeal from the District Court of Caddo parish, in suit of the State of Louisiana vs. W. W. Smith.

The effect of this dismissal was to make final the judgment of the District Court annulling and cancelling the certificate and patent from the State by which Smith claimed to be owner of the Silver Lake lands.

In 1860, when the order of appeal was granted in that case, appeals from Caddo parish were made returnable to the Supreme Court at Monroe, in that State, and to the next session of that Court.

The next session after the appeal should have been in July, 1861. Counsel for the plaintiffs in error obtained a certificate from the clerk of the Court, that the transcript in that case had not been filed. (Record, p. 73

Upon the trial in this case defendants in error filed in evidence a certificate from the Clerk of the Supreme Court at New Orleans, showing that in August, 1866, the said case was called and continued. Record, p. 95. 74

Upon that showing the plea of res adjudicata made by

the plaintiffs in error was defeated.

After this trial, and judgment in favor of defendants in error, search was made amongst the old records of the Supreme Court stand in the loft of the Supreme Court building in New Orleans, and was found a decree of the Supreme Court in that case of date August 11, 1869, dismissing the appeal by consent of the parties, which is presented to this Court with the affidavit of W. H. Wise, to show that it was not discovered until after the trial and judgment in this case, and the circumstances under which the discovery was made.

One of the attorneys in the instant case, A. H. Leonard, Esq., was the attorney of record in the said suit of State vs. Smith, and must have known, when he obtained the certificate (R. 74), that a later order dismissing the case had been entered, and should have produced a full and complete record.

The only precedent we can refer the Court to for remanding a case upon affidavits of newly discovered evidence is Schneider vs. Aetna Life Insurance Company, La. Annual Reports, page 1198. In that case the plaintiff sued on a policy of insurance on the life of her husband. She had judgment in the lower court and defendant appealed. After the record had been filed before the Supreme Court the defendant filed affidavits to the

effect that the man on whose life the policy was issued, had since the trial in the court below been found, and was then living in San Francisco. The affidavit of the man himself was taken and presented to the court, in which he detailed circumstantially his marriage and subsequent life with the plaintiff, and with the affidavit his photograph then taken was also presented to the court.

Though a court of appellate jurisdiction only, the case was remanded. The court said:

"We can not receive new and original evidence except for certain purposes, and there is no precedent in our Reports to this application. Nevertheless it is the duty of the courts to make precedents when the ends of justice demand it."

This case should for these reasons be remanded for a new trial.

Respectfully submitted,

FRANK P. STUBBS,

WISE & HERNDON,

Of Counsel for Plaintiffs in Error.

Edw'd Coleston

Robert Clarke & Co., Printers, Cincinnati.] [*February, 1887.*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1886.

The Vicksburg, Shreveport and Pacific R. R. Co.,
Plaintiff in Error,

No. 1,309.] *vs.*

Robert N. Smith and Others.

Brief of Plaintiff in Error on Motion to Dismiss.

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
GEORGE HOADLY, JR.
FRANK P. STUBBS,
Counsel for Plaintiff in Error.

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Robert N. Smith and Others.

Brief of Plaintiff in Error on Motion to Dismiss.

This action was brought in the United States Circuit Court for the Western District of Louisiana.

The petitioners are heirs of W. W. Smith.

They allege that W. W. Smith purchased, in 1853, from the State of Louisiana, a tract of land situated in Caddo Parish, containing one hundred and eighty-six acres, and known as "Silver Lake,"

"and that as heirs of said Smith they are the legal owners of said tract of land, which is illegally withheld from them, and a part of which, containing 40 acres or more, is in the unlawful and wrongful possession of one George A. Turner."

They conclude their petition, with the prayer for

judgment for the recovery of said tract of land in the possession of said Turner.

Turner answered that he was in possession as tenant of the Vicksburg, Shreveport and Pacific Railroad Company, and prayed that his lessor be made defendant and he discharged, which was accordingly done. La. Code of Practice, Art. 43.

Upon being cited, the said railway company answered, denying petitioners' ownership of said "Silver Lake" tract, as described in their petition; alleged said company to be the owner of said land (186 acres) by grant from the U. S. Government, and concluded with the prayer

"for judgment, decreeing defendant company to be the owner of said land, and quieted in possession thereof, and for general relief."

On the trial exception (2) was reserved by defendant company to the court's refusal to admit testimony. As this exception sets forth the controversy involved in this motion we quote.

The defendant company offered to show that the land described and claimed by the plaintiffs in their petition, under a certificate and patent from the State of Louisiana, and which is claimed by defendant under a grant from the U. S. Government to the State of Louisiana to aid said railroad, and for which defendant prays judgment, recognizing its ownership, etc., is worth the sum of $10,000; whereupon plaintiffs' counsel objected on the ground that the only part of said "Silver Lake" tract of 186 acres, that was in controversy in this suit, was the part alleged to be in the possession of defendant, Turner, and it was admitted by counsel for defendant that said part or parcel of land was not worth exceeding $2,000.

In excluding the testimony the court says:

"The testimony of the above named witnesses was not heard, because the petition claims only the number of acres of land held by or in the possession of George E. Turner, the defendant, and the judgment in this case, if for plaintiff, could affect only the land held by Turner, and the claim set up by the defendant, Turner, or by the railway, whatever it may be, does not make this a suit for more than the number of acres claimed by the plaintiff, which is about 40 acres, more or less, and is shown by the admission of counsel not to be worth more than $2,000. If the suit involves title to the 186 acres of land, then the land to be passed on is worth about $10,000, as is admitted by counsel for plaintiff."

What is involved in this suit?

The allegations of plaintiffs' petition must be taken as a whole and construed together.

They claim to be the owners of the "Silver Lake" tract (186 acres), *which is illegally withheld from them.* Withheld by whom?

A portion, they say, by Turner; but Turner is only a tenant of the railroad company, which claims, as plaintiffs do, title to the whole tract. Then in reality the railroad company withholds, not alone the parcel of the tract inclosed by its tenant, Turner, but the entire tract, from the possession of plaintiffs.

If the plaintiffs recover in this action it will be because the court will hold the title of plaintiffs to the land better than defendant's title.

Each sets up title to the 186 acres. It is apparent that plaintiffs, under their own allegations, can not be the owners of a part of the Silver Lake tract without being the owners of the whole tract.

But if there is any doubt as to the quantity of land claimed by the plaintiffs, there can be none in regard to the demand of the defendant company.

The defendant company put at issue its title to the entire tract of 186 acres. Judgment in favor of plaintiffs for any number of acres is a rejection of defendant's demand. La. Code of Practice, Art. 374, reads:

"The demand which the defendant institutes in consequence of that which the plaintiff has brought against him is termed a demand in reconvention."

The defendant was entitled to institute in the present suit its reconventional demand. C. P., Art. 375.

"In all cases of reconvention the defendant may plead it either as an exception in his answer to the principal demand or institute a distinct and separate demand before the court in which the main action is pending," etc. Art. 377.

Millandon et al. v. *McDonough*, 18 L. 802, was an action at law for slander of title. McDonough joined issue, pleaded a general denial and set up title to the land in question, and prayed for judgment decreeing him to be the lawful owner of said land.

The court held that:

"In an action for slander of title, when the defendant reconvenes, and sets up title, it becomes essentially a petitory action, and the burden of proof of title rests on defendant."

Louisiana practice does not require that plaintiff should file a replication to defendant's answer. The plaintiff is considered as denying all of defendant's allegations.

In *Elgin* v. *Marshall*, 106 U. S. 581, the court say:

"*Stinson* v. *Dousman*, 20 H. 461, was an action at law for the recovery of rent where the claim and judgment against the defendant below were less than the amount required to give this court jurisdiction on a writ of error; but in giving judgment for plaintiff below for any sum at

all, the court necessarily passed upon a defense of the defendant set up by way of answer, in the nature of a counterclaim insisting upon an equitable right to a conveyance of the land, out of which it was alleged the rent issued, and the value of which was in excess of the limit required for the jurisdiction of the court. *The effect of the judgment was to adjust the legal and equitable claims of the parties to the subject of the suit, which was, not merely the amount of the rent claimed, but the title of the respective parties to the land.* On that ground alone the jurisdiction of the court was upheld."

In *Stinson* v. *Dousman*, the court say:

"The answer of the defendant is framed not only to present a legal defense against the claim preferred in the petition, but also to obtain a decree affirmative of the continuing validity of the contract of sale."

In the instant case the answer of defendant is so framed, and the judgment in the case rejecting defendant's demand to be decreed the owner of the "Silver Lake" tract of 186 acres, raises a question involving property worth $10,000.

Respectfully submitted,

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
GEORGE HOADLY, JR.
FRANK P. STUBBS,
Counsel for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
JAN 10 1887
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 1309.

THE VICKSBURG, SHREVEPORT & PACIFIC R. R. COMPANY, PLAINTIFF IN ERROR,

vs.

ROBERT M. SMITH & OTHERS.

MOTION.

The defendants in error come and move the court to dismiss the above writ of error, for the reason that the matter therein in dispute does not exceed the sum of five thousand dollars, exclusive of costs.

The action was for the recovery of possession of certain land, and was brought in the United States circuit court for western Louisiana, in November, 1885.

The form of action was by petition, and set forth (Record, folio 1, &c.,) that the petitioners were heirs of one W. W. Smith, who in 1853 had purchased from the State of Louisiana a tract of land lying in the parish of Caddo, and containing one

hundred and eighty-six acres, known as "Spring Lake," and that as such heirs the petitioners are owners of "*Spring Lake, which is illegally withheld from them, and a part of which, containing forty acres or more, is in the unlawful possession of George H. Turner, of the said parish of Caddo and State of Louisiana, and a citizen of said State, who refuses to deliver the said part of said land to your petitioners after amicable demand,*" &c. Such part is stated to be "worth at least six hundred dollars."

Upon being cited, Turner (folio 6) answered that in respect of his possession he was tenant of the Vicksburg, Shreveport & Pacific Railroad Company, and prayed that his lessor should be made defendant and he be discharged.

Accordingly (folio 8), this was done, and (folio 10) the said company duly cited.

[It may be well to state here, although not necessary perhaps for any purpose of the present motion, that the title set up by the petitioners was, that, in 1853, W. W. Smith had purchased the land in question of the State as *swamp lands*, granted to the latter by the United States; and that the defendants denied that such lands were *swamp lands*, and alleged a title in themselves through the State as donee from the United States for railroad purposes.]

For defence the railway company *excepted*, (1st, folio 19) to the allegation in the petition that the petitioners were heirs of W. W. Smith, and (2d, folio 21) that there was a *former* judgment. All the folios of the record but a few are taken up with the evidence pertinent to such 2d exception.

Upon the disallowance of these exceptions it answered upon the merits (folio 161), and in the course of such answer stated (folio 163) "that the land described in plaintiff's petition and sought to be recovered in this suit is worth at least $10,000." And the conclusion of such answer prayed "for judgment decreeing the defendant company to be the owner of said land, and quieted in possession thereof, and for general relief."

Upon the trial a verdict was rendered as follows (folio 165): "We, the jury, find for plaintiffs, and that the land sued for is described in the plot made [by] W. R. Devoe, and filed in evidence."

By the judgment (folio 168) the plaintiffs are "declared to be owners of the land in controversy, and entitled to the possession of the same, said lands being known and described as follows: Commencing at rock, &c., &c., containing (folio 169) 35.18 acres, situated in the parish of Caddo," &c.

Six *exceptions* were filed (folio 173): (1) for refusal of defendants' motion for a continuance; (2 &c.) for rejection of certain tenders of evidence; and (4) to the details of the judgment.

As part of exception (2), signed by the judge below, it is stated that the company offered to show—

"That the land described and claimed by the plaintiffs in their petition under a certificate and patent from the State of Louisiana, and which is claimed by the defendants under a grant from the United States Government to the State of Louisiana to aid said railroad, and for which defendants prays judgment recognizing their ownership, &c., is worth the sum of $10,000, whereupon plaintiffs' counsel objected on the ground that the only part of said Silver-Lake tract of 186 acres that was in controversy in this suit was the part alleged to be in the possession of the defendant Turner, and it was admitted by the counsel for defendants that said part or parcel of land was not worth exceeding $2,000."

In connection with exception 2 (above) the court states as follows:

"The testimony of the above-named witnesses was not heard because the petition claims only the number of acres of land held by or in possession of George Turner, the defendant, and the judgment in this case, if for the plaintiffs, could affect only the land held by Turner, and the claim set up by the defendant Turner or by the railway, whatever it may be, does not make theirs a suit for more than the number of acres claimed by the plaintiff, which is about forty, more or less, and is shown by the admission of counsel not to be worth more than $2,000. If the suit involves title to the one hundred and eighty-six acres of land, then the land to be passed on is worth about $10,000, as is admitted by counsel for plaintiffs."

The record, therefore, shows an action of ejectment in Louisiana for so much of a tract of 186 acres as was in the possession of one Turner, with a verdict and judgment therein in favor of the plaintiffs, the land in question being thereby ascertained as $35\frac{18}{100}$ acres, which as was admitted by counsel for defendants below is worth only about $2,000.

If reference be had, therefore, to the ordinary condition of a defendant who becomes plaintiff in error, it is submitted that this writ must be dismissed. (Railroad *vs.* Bank, 118 U. S., 608; and see Bruce *vs.* Railroad, 117 U. S., 514.)

Probably, however, it will be suggested in behalf of the plaintiff in error that the present record shows certain peculiarities that prevent the application of the ordinary rule just stated.

For it appears that, although the petition of the plaintiffs demanded judgment against Turner, the original defendant, for only so much of a tract of 186 acres as he possessed (viz., that ascertained by the judgment to be $35\frac{8}{10}$ acres), yet that after the railroad company, as Turner's lessor, had been substituted as defendant, inasmuch as it was in possession not only of Turner's part, but as well of the whole 186 acres, and inasmuch also as the plaintiffs had alleged in their petition that they were owners of such 186 acres, and were illegally deprived of its possession, it was competent upon such record for the defendant to raise questions *as to such whole*, admitted to be worth $10,000, *and that it had done so* by asking in its answer for a decree *quieting* its possession, and also for *further relief*.

If this be competent (and is submitted *only then*) the matter in issue upon the record may in value exceed $5,000. But this counter-application for relief by the defendant (*plaintiff in error*) is not competent, for the reason that the ground thereof (*quiet possession, &c.*) is an equitable right merely.

More particularly the present objection is that (probably because of the Louisiana system of law) the defendant in a court of the United States seeks to ignore the fundamental distinction betwixt *common law* and *equity*, and have a court pass upon and administer claims (raising "value," &c., above $5,000) which at most are only *equitable*, and which have been asserted by a defendant in a case standing upon the law docket and brought to enforce a common-law right.

The present case, therefore, is the converse of Hurt *vs.* Hollingsworth (100 U. S., 100), in which this Court held (in accordance with long-established principles) that a bill to *quiet title* to land could not, in a Federal court sitting in *Texas*, be

met by an answer asking for *possession* of the same land [although in the courts of that State such proceedure might have been competent. Sheirburn *vs.* Cordova, 24 Howard, 423].

It is therefore submitted that no competent question is raised upon this record except as to property worth about $2,000, and therefore that the writ of error should be dismissed.

A. J. Falls,

S. F. Phillips,

For the Motion.

Office Supreme Court U. S.
FILED.
MAR 26 1890
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CLERK.

Supreme Court of the United States

NO. 276.

OCTOBER TERM, 1889.

VICKSBURG, SHREVEPORT AND PACIFIC RAILWAY COMPANY

versus

R. N. SMITH, ET AL.

Writ of Error to Circuit Court United States, Fifth Circuit Western District of Louisiana.

BRIEF AND ARGUMENT OF COUNSEL FOR R. N. SMITH, ET AL.

A. H. LEONARD.
LAND & LAND,
Counsel for Defendants in Error.

M. F. DUNN & BRO., PRINTERS, NEW ORLEANS.

SUPREME COURT OF LOUISIANA.

NO. 276.

OCTOBER TERM, 1889.

VICKSBURG, SHREVEPORT AND PACIFIC RAILWAY COMPANY

versus

R. N. SMITH, ET AL.

Writ of Error to Circuit Court United States, Fifth Circuit Western District of Louisiana.

BRIEF AND ARGUMENT OF COUNSEL FOR R. N. SMITH, ET AL.

The attention of the Court is particularly directed to the fact, that the transcript made by Clerk of Court a *qua* was prepared without any systematic order and is encumbered with a portion of the evidence adduced on trial, and with a mass of papers

and documents, not received in evidence in Court a *qua*, not connected with or referred to in any bill of exception, and not in any manner related to any matter at issue in this Court.

All this involves much unnecessary labor and trouble in examining the record and leads to confusion as is shown by the brief of the learned Counsel for the plaintiffs in error, who, had no connection with the case in the lower Court, and bases his argument on matter which he finds in the printed record, much of which was not in evidence in the lower Court, and none of which is properly before this Court.

The argument of Counsel is erroneous, even from his own standpoint, as will be hereinafter shown, but we submit, that as this cause is before this Court on writ of error, only questions of law can be reviewed, and no evidence whatever can be considered except such as is presented by and connected with a bill of exceptions properly taken. It will be hereinafter shown there is no bill in this record entitled to any consideration. Meanwhile we assume Your Honors will consider only that portion of the record properly brought to your attention.

STATEMENT OF CASE.

This is an action to recover possession *of a portion* of a certain tract of land situated in Caddo Parish, Louisiana known as "Silver Lake," con-

sisting, according to public surveys of portions of sections 31, 32 and 36 of township, 18 North ranges, 13 and 14 West, embracing $186\frac{57}{100}$ acres.

The plaintiffs, heirs of W. W. Smith, deceased, allege that said tract of land is swamp and overflowed land, granted to the State of Louisiana by act of Congress of 2d of March, 1849, "to aid the State in draining the swamp lands therein," and by act of Congress of September 28, 1850, "to enable the State of Arkansas and other States to reclaim the swamp lands within their limits" (9 Stat., 519), and by the State sold as swamp and overflowed land to W. W. Smith on May 14, 1853. That thereafter to-wit on February 24, 1855, said State issued to said Smith a patent for said tract.

That all sales of land in Louisiana claimed as swamp and overflowed lands, whether made by the United States or by the State, and whether the land was of that character or not, were confirmed by act of Congress of March 2, 1855, "for the relief of purchasers and locators of swamp and overflowed lands."

That W. W. Smith acquired indefeasible title to said land from the State by purchase and from the United States by said confirmatory act.

That they are owners of said tract of land, *a part of which*—40 acres or more—is in the unlawful possession of one George A. Turner, who re-

fuses to deliver the *said part* of said land and that *said part* of said land is worth $600 00.

The prayer is for judgment for recovery of said tract of land *in the possession of the said Turner*, with its rents and revennes.

Turner disclaimed title and averred that he held possession of *a portion* of the property described in petition as tenant of the Vicksburg, Shreveport and Pacific Railway Company. Record, p. 3.

Thereupon said Company was made party defendant and appeared first with an exception denying the heirship of plaintiffs, which was tried and overruled. Record, p. 9.

The plea of *res judicata* was next interposed (Record, p. 9), which was tried with the merits and overruled. See last clause of judgment signed by judge a *quo*. Record, p 81.

This plea alleges that the certificate and patent issued to W. W. Smith for the land in controversy were declared null and void by a judgment rendered in the suit of the State of Louisiana versus W. W Smith and that the plaintiffs, as heirs of W. W. Smith are bound by that judgment.

As stated above this plea was tried and overruled. No exception was taken to the ruling of the judge a *quo*. The evidence on which he based his conclusion is not before this Court (we may be permitted to say, however, that the evidence fully justified that conclusion), his judgment overruling the plea is therefore final and cannot properly be questioned in this Court.

Nevertheless, the entire argument on the merits of the learned counsel for plaintiffs in error is based on this plea of *res judicata*, which, as a matter of fact, was abandoned by the counsel who filed it in Court a *qua*, and which, as a matter of law, was properly overruled by the judge a *quo* on the evidence before him, without any objection or exception on the part of the Railway Company or their attorneys.

But to proceed. The defendant Company answered (Record, p. 77), denying generally the allegations of plaintiffs' petition, alleged that the sale or entry of the land as set forth in said petition was cancelled and that the sale entry and patent to W. W. Smith are null for several reasons.

1st. Because the law under which said entries were made had not been promulgated at the date of the entry.

2d. Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

3d Because the patent to said land was issued by the Register in error of the fact that said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated

Further answering the Company say that said land was never selected by the State of Louisiana as swamp and overflowed lands, has never been reported to the General Land office or approved as

such by any officer of the United States, or listed or returned by the Secretary of the Interior to the State as swamp and overflowed land. That the State never acquired or claimed said land as such. That said land does not and never did belong to that class of lands and is not embraced in the "swamp land" grants.

Further answering the Company claimed to be owner of said land under act of Congress of June 3d, 1856, "granting lands to the State of Louisiana to aid in the construction of railroads." Alleged that the land described in petition and sought to be recovered in this suit is worth $10,000 00 and prayed for judgment rejecting plaintiffs' demand, decreeing the Company to be the owner of said land and quested in possession thereof.

On these issues a jury trial was had, a verdict found for plaintiffs (Record, p. 79) and a judgment rendered (Record, p. 80), decreeing plaintiffs to be the owners of *a certain particularly described tract of land containing* $35\frac{18}{100}$ *acres.*

A MOTION TO DISMISS,

on the ground that the matter in dispute does not exceed the amount of $5000, exclusive of costs, was duly filed in this Court, which at October term, 1886 (122 U. S., 638), was continued for hearing with the case on its merits.

The action instituted by plaintiffs was for the recovery of some 40 acres of land in the possession

of Turner alleged to be a part of a certain tract of land containing 186 acres. The prayer was for judgment only for the land in Turners possession.

Turner admitted his posession of "a portion of the property described in petition" as tenant of the Railway Company.

The Company denied the allegations of plaintiffs petition, claimed to be owner of the land therein described and that said land so described "*and* sought to be recovered in this suit" is worth $10,000.

It is clear from the pleadings that the matter in dispute was about 40 acres of land in the possession of Turner.

The verdict is as follows: "We the Jury find for the plaintiff and that the land sued for is described in the plot made by W. R. Devoe and filed in evidence." Record p. 79.

On this verdict a judgment was rendered decreeing plaintiffs "to be owners of the land in controversy, and entitled to possession of same. *Said* lands being known and described as follows: Commencing at a rock &c., containing $35\frac{18}{100}$ acres." Record p. 80.

It was admitted on trial in the lower Court, the admission being offered in evidence on part of the plaintiffs in that Court that the land *in Turners possession* is not worth more than $2000.

It was the theory of the Counsel for the Railway Company in the lower Court, that the suit involved

the entire tract, known as Silver Lake and attempting to carry out this theory, the defendant company (see bill exceptions No. 2. record p. 83) offered to prove that the land described and claimed by plaintiffs *and which is claimed by defendant* is worth $10,000. This was objected to on the ground that the only part of the Silver Lake tract of 186 acres in controversy was the part alleged to be in the possession of defendant Turner admitted by defendant Company to be worth not exceding $2000.

This objection was sustained because "the petition claims only the number of acres of land held by or in the possession of George Turner" and the "judgment if for plaintiff could affect only the land "held by Turner and the claim set up by the defendant Turner or by the Railway Company, whatever it may be does not make this a suit for more "than the number of acres claimed by plaintiff, "which is about 40 acres shown by admission of "Counsel not to be worth more than $2000."

The record shows an action of ejectment for so much of a tract of 186 acres as was in the possession of one Turner, with a verdict and judgment thereon in favor of the plaintiffs for the land in question, ascertained and decided to be $35\frac{18}{100}$ acres, worth not more than $2000.

Such being the case it seems clear that the motion to dismiss must prevail. See Elgin vs. Marshal 106 U. S. 578. Bruce et al vs. Manchisler & Keene, R. R 117 U. S. 514.

The learned Counsel of the plaintiffs in error,

insist that the controversy in the Circuit Court involved the entire tract of 186 acres, worth $10,000, because, while plaintiffs in that Court demanded judgment against Turner for only so much of that tract as he possessed ascertained to be only $35\frac{18}{100}$ acres, they nevertheless, asserted ownership of the whole tract and because the Railway Company when made party defendant, in their answer claimed the whole tract and prayed for a decree quieting their possession.

It may be remarked *en passant*, that if the Railway Company did pray to be quieted in the possession of the entire tract, the relief prayed for being purely equitable in its nature, could neither be granted nor considered, when presented in an answer to an action at law.

As a matter of fact the defendant Company does not claim to be owner or possessor of the entire tract, their claim is based on an Act of Congress, approved June 3rd, 1856, granting certain lands to aid in the construction of railroads. That Act grants certain alternate sections of land designated by odd numbers and a considerable portion of the entire tract of 186 acres known as Silver Lake lies in sections 32 and 36, to which the Railway Company has no claim and has not asserted any claim.

Moreover the Railway Company in their *answer* limit their denials and their claims to the land claimed by the plaintiffs in Court a *qua*, "the land sought to be recovered in this suit" Record p. 78

But if the contention of Counsel for plaintiffs in error were well founded it would avail them nothing.

This writ of error is brought by the defendant in the original action. The judgment of this Court can only affirm that of the Circuit Court, consequently "the matter in dispute" cannot exceed the amount of that judgment. *Nothing but that judgment is in dispute between the parties* Gordon vs. Ogden 3 Peters 33.

In Grant vs. McKee 1 Peters 248, this Court refused to take jurisdiction because the value of the premises, the title to which was involved was less than the jurisdictional limit, although they were part of a larger tract held under one title on which the recovery in judgment had been obtained against several tenants whose rights all depended on the same questions. Borrowing the words used by this Court in Elgin vs. Marshal, 106 U. S. 582, we submit that "to entertain jurisdiction in the present case would be to unsettle the principle of construction by which in all cases, this Court has been guided."

The learned counsel for plaintiffs in error assert that the judgment of Court a *qua* "is for the possession of certain lands therein described and no "value is attributed to them." If this assertion were true it would follow under the settled practice of this Court that the motion to dismiss must prevail. See case cited by counsel, Parker vs. Morrill, 106 U. S., 1.

But say the learned counsel the Court may look to the Record for evidence of value, and on looking to the Record will find that in the answer of the Railway Company the land sought to be recovered is alleged to be $10,000.

Does counsel mean to say that *allegations* in pleading are to be taken as *evidence* against an adversary of a jurisdictional fact or of any other fact? If so, the Court will find that in the petition this land is alleged to be worth $600. But whatever counsel may mean, the allegations in the answer and those in the petition are not evidence, except against the party making them. and cannot be considered in arriving at any conclusion as to the "amount in dispute."

The Record, however, shows that amount to be less than $5000.

The allegations of the petition not being evidence of the facts alleged, it became necessary for the plaintiffs in Court a *qua* to fix the value of the property they claimed by sufficient and competent evidence, which they did by the judicial admission made during the trial by the counsel for the Railway Company that the part or parcel of land in the possession of Turner was worth $2000. This admission dispensed with any other evidence and cannot be contradicted by the party making it The learned counsel is in error when he asserts that an admission of a fact made by the counsel of a party to a cause on trial can be supplemented

and explained away. On the contrary, such admission is conclusive evidence of the fact admitted as against the party making the admission.

All this appears on the face of bill of exceptions (No. 2 Record, p. 83) in which the judge a *quo* states that the land held by turner "*is shown by admission of counsel to be worth not more than* $2000."

It is difficult to believe that the counsel in this Court of the plaintiffs in error is serious when he argues that the judge a *quo* would not hear any evidence, nor allow any to go into the Record as to the value of the property in dispute, and that the judge himself on his own motion found the value without any evidence, merely because he at sometime heard counsel for defendant say that such value was about $2000.

The judge a *quo* did hear evidence as to the value. Not a mere loose statement made out of Court, or in the course of argument, but a solemn admission of a fact made during the trial of the cause, by counsel of Record for the Railway Company, which as against the Company is the best possible evidence of the fact admitted and which cannot now by that Company be denied.

ON MERITS.

There being no error patent upon the Record the judgment of Court a *qua* is open to revision only so far as errors of judge a *quo* on questions of

law are presented by bills of exception. Six bills of exception are in the Record, but none of them is a bill such as can be considered in this Court.

This cause was tried in lower Court and a verdict found therein on July 31, 1886; a motion for new trial was filed August 2, 1886, which was overruled August 4, 1886, and on same date judgment was signed. No bill of exceptions was presented or filed until the 4th day of August, 1886, four days after verdict was rendered. The bills in transcript do not appear to have been tendered or signed in open Court, nor does it appear that exceptions were taken while the jury were at the bar, or that they were taken in open Court.

In order to make a bill of exceptions valid it must appear by the transcript, not only that the ruling of the trial judge was made on trial, but also that the party complaining of such ruling. excepted while the jury were at the bar.

The bill of exceptions must be taken in open Court, and must appear by the certificate of the judge who authenticates it to have been so taken. Hence, when verdict was rendered on a certain day, and on next day exceptions were filed, such exceptions cannot be considered. Phelps vs. Mayer, 15 Howard, 160.

But even though the bills of exception were formal and regularly taken, they show no error on part of judge a *quo*.

Bill No. 1, Record 82 is to the ruling of that

judge refusing a continuance. It is well settled that it rests in the sound discretion of the Court to grant or refuse a motion for a continuance. Moreover it is patent on the bill that no reason existed for an exception. When the cause was called for trial, the Railway Company moved for a continuance, supported by affidavit, Record p. 76, on ground that the Company expected to prove certain facts by certain absent witnesses, thereupon Counsel for the plaintiffs admitted for the purposes of the trial, that if the witnesses named were present they would testify as stated in the motion for continuance, reserving only the right to make legal objections to the admissability of the testimony. Thus giving to the Railway Company the full benefit of all the Company expected to prove by the witnesses. An exception taken under such circumstances can scarcely be seriously considered.

Article 466 of the Code of Practice of Louisiana, provides as follows: "When one of the parties to a "suit prays for continuance on account of the "absence of one or several of his witnesses, the "adverse party may require him to disclose under "oath what facts he intends to prove by such wit-"nesses, and if such adverse party admit those "facts, or if he merely admit that the witnesses "would if present swear to such facts, the court "shall proceed to the trial as if such witnesses had "been examined."

Bill No. 2, Record 83, recites that on trial the Railway Company offered certain persons as wit-

nesses to prove that the land described and claimed ed by plaintiffs in their petition under a patent from the State and which is claimed by defendant under a grant from the United States in aid of railroads and for which defendants pray judgment recognizing their ownership is worth $10,000, to which Counsel for plaintiff objected on the ground that the only part of the Silver Lake tract of 186 acres in controversy in this suit is the part in the possession of Turner admitted to be worth not exceeding $2000.

This objection was sustained because the petition claims only the number of acres of land held by or in possession of George Turner, because the judgment in this case could affect only the land held by Turner, and the claim set up by Turner or by the Railroad, whatever it may be does not make this a suit for more than the number of acres of land claimed by plaintiff, which is about 40 acres, shown by admission of counsel to be worth not more than $2000.

The reasons assigned by judge a *quo* seem to be conclusive. The matter in dispute in this cause is that portion of the Silver Lake tract in the possession of George Turner, from which plaintiff seeks to eject him by an action at law. Admitting for the sake of argument that the Railroad claims ownership and possession of the entire tract (which is not true), still, if the Railroad is in possession it cannot sue in a Court of law to be

quieted in its possession. The Railroad cannot by an answer transform an action at law into a cause in equity.

From Bill No. 4, Record 85, it appears that when the counsel for plaintiffs had read the judgment in this case, and offered it to the judge for signature, the defendants objected to the same being signed, because said judgment gives a minute description of a certain tract of land in the possession of George A. Turner, when plaintiffs in their petition give no description of said land, nor does the map made by W. R. Devoe, surveyor, filed in this suit, give any such description.

This objection was overruled for the sufficient reason that the objections were not true. The map of the land in suit made by W. R Devoe received in evidence without objection, describes the land in suit, and the jury found "that the land sued for is described in the plat made by W. R. Devoe and filed in evidence."

We submit also that no "exception" lies for entering a judgment. Pomeroy's Lessees vs. State Bank of Indiana, 1st Wallace, 592.

There is no error in the judgment patent in the Record, and in the absence of any bill of exceptions to the rejection or admission of evidence, as to the description of the land in controversy, or to the charge of the Court as to such evidence, it must be presumed that the evidence adduced justified the judgment.

Bill No. 5, Record p. 85, is to the ruling of judge a *quo* rejecting certain evidence offered by defendants, to wit: "All the *evidence* that was taken and used on trial of case entitled the State of Louisiana vs. W. W. Smith, No. ——, on docket of the District Court of Caddo Parish, Louisiana."

The clerk of Court a *qua* copied in his transcript not only the evidence adduced in said cause, but all the proceedings had therein, thereby greatly confusing the Record with matter not before the Court.

The evidence offered is stated in the bill to be annexed to the bill. As a matter of fact it was not and is not so annexed; it is not incorporated in the bill, nor is it marked by letter, number or other means of identification mentioned in the bill; therefore this bill should be disregarded. 4 Wall, 187.

But waiving all this, the ruling excepted to was correct. The evidence offered was rejected, because it was adduced in a cause, *res inler alios aeta*, as to the parties in present cause, and because it was testimony of witnesses not shown to be dead or otherwise disqualified.

The testimony of witnesses given on trial of a cause is not admissable in another cause even between the same parties, unless it be shown that the witnesses are dead or otherwise disqualified. And in present instance the testimony offered was given in a cause to which the parties herein were not parties.

The counsel for plaintiffs in error contends in this Court that the plaintiffs in Court a *qua* were parties to the suit of the State of Louisiana vs. W. W. Smith. It will be shown hereafter that counsel is mistaken, but for the purposes of the bill it is sufficient that the witnesses whose testimony was offered were not shown to be dead or otherwise disqualified, with the exception of T. P. Hotchkiss, whose testimony was admitted without objection His testimony proves that the land in question was of the character embraced in the swamp land grants of 1849 and 1850 and if this Court should conclude to consider the bill an examination of the evidence excluded will show there is nothing in it which could possibly have changed the conclusion arrived at by the jury that the land in controversy was embraced in the swamp land grants.

Bill No. 6, Record p. 86, is an exception to the ruling of the judge a *qua* refusing to receive a plea of prescription *i. e.*, the statute of limitations. The attention of the Court is directed to a misprint in the Record, which reads: "Objection was sustained because the suit had been *sued*." It should read "because suit had been tried."

This plea was offered for the first time four days after a trial had been had and a verdict found. It was properly rejected because it came too late under the rules of practice.

The party excepting has not incorporated the rule of practice in his bill of exceptions, this Court

will therefore presume that the Court below construed correctly its own rules. Packet Company vs Sickles 19 Wall, 611.

Bill No. 3, Record, 84, is an exception to the charge of the Court, viz: "If the jury find that the "land in question was on September 28th, 1850, "swamp and overflowed or such land as came un- "der the description of the act in which the grant "was made to the State, and had not then been "sold by the United States, it follows that title "vested in the State. Shallow non-navigable fresh "water lakes and ponds coming within the lan- "guage of that act were included in the grant. "The Court by way of definition and illustration "will say what the words used in the act mean, "and it is for the Jury to say whether the land in "question is such land as is named in the act. The "character of the lands claimed by plaintiff to be "swamp lands, such as are described in the act can "be shown by witnesses who have personal knowl- "edge thereof and such testimony is sufficient to "show that the land sued for, is, or that it is not "such land as is described in the act of 1850.

"It was shown without any contradiction on the "part of defendant that the land in question was "surveyed in 1853 by the Surveyor General of "Louisiana, that W. W. Smith the author of plain- "tiffs title entered said land has a patent for it, and "paid the State for it in 1853 after it was surveyed. "These matters were not in any way disputed by

" defendant and I charge you that the grant was " a present grant resting title in the State, and if " you find that the land comes within the language " of the statute, you will find for plaintiff. I charge " you that nothing further was essential to make " the title vest in the State, that in this case the " failure to file in the general land office of the " United States a list of the lands selected under " the acts of 1849 and 1850 does not defeat plain- " tiffs claim, if you are satisfied from the evidence " that the lands is of such a character as the stat- " ute describes."

"W. W. Smith having entered the land and paid " the State for it in 1853, after it had been survey- " ed by the Surveyor General of Louisiana it was " not necessary in this case to make his title good " in law for the Secretary of the Interior to have " done anything further or for a list of the land in " question to be filed in his office or in any of the " departments."

It will be observed that this bill gives the charge of the Court at large to the jury and excepts generally to the entire charge. The party excepting has not stated distinctly the several matters of law in such charge to which he excepts. The bill, therefore, under provisions of the fourth rule of this Court, should not have been allowed and cannot be considered.

The charge of the Court at length cannot be brought here. Carver vs. Astor, 4 Peters, 1.

A mistake of law would be good ground for exception, which, however, must be strictly confined to that mistake (R. R. Co. vs Varnell, 8 Otto, 479) and specifically set out in the Record. Harvey vs. Tyler, 2 Wall, 328. See also 3 How., 553.

It does not appear by the transcript that the charge was excepted to while the jury were at the bar. This bill is, therefore, invalid. Phelps vs. Mayer, 15 How., 160.

It is the duty of counsel excepting to propositions submitted to a jury by the Court below to except to such propositions distinctly and severally. If the propositions are excepted to *en masse* the exception will be overruled, provided *one* of the propositions be true. Rogers vs. Marshal, 1 Wall, 645; Johnston vs. Jones, 1 Black, 209; Lincoln vs. Claflin, 7 Wall, 132; Beaver vs. Taylor, 3 Otto, 46; R R. Co. vs. Varnell, 8 Otto, 479.

But the charge of the Court is sound. Each and every proposition thereof is true and in stating them the judge a *quo* used the exact words in which the opinion of this Court was expressed in Wright vs. Roseberry, 121 U. S., 488, a case in all respects similar to case at bar and conclusively in our favor as to all points at issue herein. See also San Francisco Savings Co. vs. Irwin, decided by Mr. Justice Field, 28 F. R., 708.

We feel that we might safely rest here, but "to make assurance doubly sure" will answer the argument of the learned counsel for plaintiffs in error. It cannot be possible that he has deliberately attempted to confuse the mind of the Court. It must be, therefore, that his own mind is confused, by the confused condition of the Record, resulting from the fault of the clerk of Court a *qua*, to which attention has been hereinbefore called.

We assume that counsel would not insist that the defendants in error are estopped from urging their claims by a final judgment in the case of the State of Louisiana vs. W. W. Smith, if he knew that there is no final judgment in that cause, which, as shown by the Record, is now pending in the Supreme Court of Louisiana.

This fact was known to the counsel who represented the Railway Company in the Court a *qua* and who, therefore, virtually abandoned their plea of *res judicata*. Counsel should have known, however, that this issue is not raised in the answer and was presented only by the plea of *res judicata*, which was tried and overruled without objection or reservation of any kind on the part of the counsel for the Railway Company and cannot, therefore, be reopened in this Court.

The entire argument presented to this Court in behalf of the plaintiffs in error is based on a misconception of the matters, which are before this Court.

Their counsel contends—

1st That the land in controversy is not and was not swamp land within the meaning of the Swamp Land Acts of 1849 and 1850.

That is purely a question of fact, conclusively settled against the plaintiffs in error, by the verdict of the jury and the judgment of the Court *a qua*, by which the land in controversy was found and decreed to be swamp land within the meaning of the Swamp Land Acts on competent and sufficient evidence adduced on trial of the cause.

2d. That the patent issued to W. W. Smith was not for swamp land, but only for a shallow lake and cannot be "supported as for swamp land."

This is merely a repetition of the first proposition in a different form. It raises again the question whether or not the land in controversy is of the character or class granted to the State by the Swamp Land Acts.

The patent vests in the patentee title to a certain tract of land, particularly described by reference to an official plat and survey. The tract is styled a certain shallow lake known as Silver Lake, but it is immaterial what name is given to the tract; a name cannot change the character of the land.

The State acquired this particular land under the Swamp Land Acts. The act of 1849 granted to the State "the whole of those swamp and over flowed lands which may be or are found unfit for cultivation."

The act of 1850 granted, "the whole of those " swamp and overflowed lands, made unfit thereby " for cultivation."

The third section of this act provides that "all " legal subdivisions of land, the greater part of " which is *wet and unfit for cultivation*" shall be included in the grant.

Admitting for the sake of argument that the tract in controversy was a shallow lake, a shallow lake is certainly embraced within the grant made by Congress. It is "overflowed lands, made unfit thereby for cultivation." It is "wet and unfit for cultivation," and it is susceptible of being reclaimed, and made fit for cultivation. In case of San Francisco Savings Union vs. Irwin 28, Federal Reporter, 712, Mr. Justice Field held as follows: "when drainage reclamation or leveeing is necessa- " ry to enable the farmer to use them for some of " the ordinary purposes of husbandry, the lands are " within the terms of the act of Congress and the " title passed to the State "

The act of the Legislature of Louisiana under which the land was sold and patent issued to purchaser, which will be found in appendix, provides for the sale of all shallow *non navigable* lakes, which have become the property of the State, the area of which has been ascertained by survey and *which are susceptible of being reclaimed wholly or in part by draining and leveeing.*

As was stated by Mr. Justice Field in case last

cited. "The patent of the State is *prima facie* evi-
" dence that the land embraced by it is of the
" character mentioned.

The evidence adduced, in Court *a qua* conclusively established the fact that the land in controversy was swamp and overflowed lands within the meaning of the acts of Congress.

It is surely unnecessary to discuss further a question which is purely a question of fact and which is not properly before the Court.

It is claimed that W. W. Smith purchased before the State law became effective, by promulgation, and that his entry was canceled, but conceding for the purpose of the argument only that Smith's entry was on the 14th of May, 1853, and that the law was not promulgated until June 23, 1853. Still, the defect, if any there were, was cured by the patent issued to Smith on the 24th day of February, 1855, long after promulgation of the law and long after the alleged cancellation. It may be said *en passant* that this point is of no consequence. The State wanted to sell the land and by Legislative act directed it to be sold. It was sold and the State received the price. No promulgation was necessary to inform the State of its own will and law.

The learned counsel for plaintiffs in error does not seem to rely very strongly on the propositions announced by him which we have just considered, but he argues strenuously in support of his fourth

proposition that the patent to Smith was annulled by a judgment rendered in the case of the State of Louisiana vs W. W. Smith and is, therefore, no evidence of title.

We again repeat that the issue suggested by this proposition was not raised in the answer filed by the defendant company, but was raised in the plea of *res judicata*, which was overruled by judge *a quo* without any objection being urged or exception taken to his ruling. The plea cannot, therefore, be properly reopened in this Court. Moreover, the evidence on which the ruling was made by judge *a quo* is not presented to this Court by any bill of exception and his ruling should, therefore, be presumed to be correct.

We insert again that the documents, papers, etc., which appear in the transcript as evidence offered in lower Court, cannot be considered in this Court.

On referring to bill of exception No. 5, Record, p. 85, it will be seen that *the eridence* taken and used on trial of the State of Louisiana vs. W. W. Smith was offered and properly excluded, but the *Record* in the case of the State vs. Smith was not offered and is not brought to this Court by any bill of exception. The argument of counsel is, therefore, based on nothing, so far as this Court is concerned.

We are prepared to show, however, that counsel is mistaken. There is not and never has been any judgment rendered in the case of the State vs. W. W.

Smith which could support the plea of *res judicata* or *estop* any one.

Article 3556, Civil Code of Louisiana No. 31,—Thing Adjudged—declares: "Thing adjudged is "said of that which has been decided by a final "judgment from which there can be no appeal, "either because the appeal did not lie, or because "the time fixed by law for appealing is elapsed, or "because it has been confirmed on the appeal." And it is settled by many decisions of the Supreme Court of Louisiana that "a suit pending on appeal does not form *res judicata*." See 9 M., 38; 7 La., 579; 7 A., 600; 14 A., 653.

Now, in the suit of the State vs. W. W. Smith, an appeal was taken and allowed on November 24 1860 (Record, p. 70), an appeal bond given (Record, p. 70) and a transcript filed in the Supreme Court of Louisiana, where the suit is now pending. See Record, p. 74, giving an extract from the minutes of the Supreme Court of Louisiana, showing that the suit is in that Court. It follows that the judgment of the State District Court, which counsel relies on, having been appealed from, does not have the force and effect of *res judicata*.

But that judgment is an absolute nullity because it was rendered when there was no party defendant. W. W. Smith died while the suit of the State against him was pending in the State District Court. Until the suit was properly re-

vived nothing could be done in it. This suit is what is styled in the *jurisprudence* of Louisiana, a real action—that is, an action relating to claims made on immovable property. (La. Code Practice, Art. 4–41). In order to revive such an action, it was necessary to make the heirs of W. W. Smith parties.

On February 14, 1859, a petition of revival was filed (see Record, p. 52), in which the death of W. W. Smith was suggested and in which the State of Louisiana, plaintiff, prays that John W. Smith, administrator of W. W. Smith, be cited and further prays for service on *all other legal representatives.*

No service was made on the legal representatives of W. W. Smith, deceased, although, as will be hereinafter shown, the heirs of Smith were represented in the State, and within the jurisdiction of the State District Court in which the suit was pending.

The administrator appeared and attempted to defend the cause, though he was without any power or right so to do. A trial was had, judgment rendered November 24, 1860, and an appeal taken, as hereinbefore set forth, returnable to the Supreme Court at Monroe on second Monday of July, 1861.

Appeals from the Parish of Caddo, in which the suit against W. W. Smith was brought, were at that time returnable to Monroe.

During the war, which commenced in April,

1861, nothing was done with the cause. When the war closed, by Act No. 82, Session 1866, the State Legislature made all appeals from a number of parishes, including Caddo, cognizable at Natchitoches, an annual term being held for that purpose, commencing on the second Monday of August of each year.

At the August term, 1866, the appeal was pending before the Supreme Court at Natchitoches, the minutes showing (Record, p. 74) that on August 14, 1866, an answer was filed and cause *continued*. Of course that carried the case over to August term, 1867. Meanwhile and before that term arrived John W. Smith, administrator of W. W. Smith, having filed his final account, which was duly approved and homologated, was by a judgment of the probate Court of date of August 3, 1867, discharged from the further administration of the succession of W. W. Smith and his bond cancelled. (see Record, p. 74). Consequently, when the Supreme Court convened at Natchitoches on the second Monday of August, 1867, John W. Smith, administrator, the nominal defandant being no longer administrator, nothing could be done in the case and since that time it has remained without a party defendant.

When the administrator is discharged from his trust he has as such administrator no standing in judgment. 26 A., 222; 20 A, 35; 23 A, 178.

When it is shown that a final account has been

filed, homologated and the administrator discharged the cause should be continued to make the heirs parties. Jones vs. Britton, 16 A., 321.

Moreover, the suit of the State against W. W. Smith, being, as previously stated, a real action, could not be revived by making his administrator a party defendant. In Louisiana, as in all other States, the administrator has no power to defend any but personal actions, except when the succession is a "*vacant*" succession. "A succession is "called vacant when no one claims it, or when all "the heirs are unknown, or when all the known "heirs to it have renounced it." Civil Code La., Art. 1088.

The Code of Practice of Louisiana, Art. 122, provides: "All kinds of actions may be brought "against vacant successions by suit against the "curator appointed to administer the succession.

"But if some of the heirs of the deceased are "present or *represented* in the State the suit must "be brought against the heirs present or repre-"sented, as well as against the curator"—*i. e.*, the administrator.

So likewise with successions represented by testamentary executors.

C P., Art 123: "Testamentary executors may de-"fend all actions brought against the succession "they administer when none of the heirs are "present or represented in the State; but if all the "heirs or any one of them be present or represented

"in the State, *none* but *personal* actions can be "brought against the executor alone. All real "actions must be brought both against the executor "*and* the heirs present or represented."

The succession of W. W. Smith was not a vacant succession; on the contrary, the heirs were known, and in the petition of John W. Smith, praying to be appointed administrator, the names and residence of the heirs are stated, and counsel was appointed to represent them. Record, p. 73.

Moreover, prior to the petition of revival by which the administrator of W. W. Smith was attempted to be made a party to the suit of the State, filed February 14, 1859 (Record, 52), the heirs of W. W. Smith, the defendants in error herein, were represented in the State of Louisiana. On the 30th of November, 1858, one John Brown presented a petition to the State Court for the Parish of Caddo (the same Court in which the suit of the State vs. W. W. Smith was pending) setting forth the heirs of W. W. Smith, that he was guardian of some of them, by appointment under the laws of Kentucky, and praying to be recognized and confirmed as such guardian in Louisiana. Thereupon, after due proceedings had, the said John Brown was by said Louisiana Court appointed tutor of said minor heirs, gave bond, took the requisite oath and letters were issued to him, and under authority of the Court he accepted for his wards the succession of W. W. Smith. Consequently, the heirs of W. W.

Smith, including the defendants in error, except Elizabeth W. Smith, were represented in the State of Louisiana, when the suit of the State vs. W. W. Smith was attempted to be revived, and the suit could *not* be revived, except by making them parties, which was not done. See Record, p. 27 to 34, inclusive.

The learned counsel for plaintiffs in error is misinformed as to the law of Louisiana It is not true that under the law of Louisiana the action of the State against W. W. Smith was upon his death properly revived against his administrator, or that the administrator could stand in judgment for the heirs, or that the defendants in error as such heirs are bound by any proceeding had in the suit of the State subsequent to the death of W. W. Smith. On the contrary, such proceedings were and are absolutely without effect as to defendants in error.

The fifth proposition advanced in the brief of counsel for plaintiff in error is that the plaintiff in error having been in open and notorious adverse possession of the lands in question for more than ten years its title is complete by prescription under the laws of Louisiana.

This is an attempt to raise in this Court the plea of prescription—*i. e.*, Statute of Limitations—which cannot be done, as that defense cannot be made for the first time in this Court. Moreover, we can scarcely believe that counsel is serious in his contention, because he must know that the

plea not having been tried in Court *a qua* there is no evidence whatever upon which it can be decided. It is, therefore, useless to discuss it. As a matter of fact, however, the plaintiff in error never had possession of any portion of the Silver Lake tract, except that held by George Turner, some 35 acres. The balance of the tract is now in the possession of defendants in error, It was held by a number of persons who were evicted under a judgment rendered in suits brought against them by the defendants in error, which judgment decreed defendants in error to be owners of the land and entitled to possession.

This fifth proposition is perhaps intended as an argument in favor of the bill of exception taken to ruling of judge *a quo* refusing to receive the plea of prescription tendered in Court *a qua*, because it came too late. As has been hereinbefore shown, that ruling was correct.

The motion to dismiss should we think prevail. But if it is overruled, we feel confident that your Honors will not find error in the record, and will affirm the judgment of the lower court.

A. H. LEONARD.
LAND & LAND,
Counsel for Defendants in Error.

APPENDIX.

No. 284. An act authorizing the Register of the Land office to sell certain shallow lakes in the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Register of the Land office at Baton Rouge be, and is hereby authorized to sell all the shallow lakes in the State, the area of which has been ascertained by survey and which are susceptible of being reclaimed wholly or in part by leveeing and draining. Provided that this act shall not apply to any navigable lakes in the State, and provided said sale shall not be made until the lands have become the property of the State and been legally surveyed and the surveys recognized by the State. Approved April 30th, 1853. See Acts La., Session, 1853, p 257.

No. 82. An act to organize the Supreme Court and to fix the terms thereof.

Sec. 3. That the Supreme Court shall hold its sessions at Natchitoches, on the second Monday of August of each year.

Sec 7. That appeals from the Parishes of Rapides, Natchitoches, DeSoto, Sabine, Bossier, Caddo and Winn, shall be returned to the Supreme Court at Natchitoches.

Approved March 10th, 1866. Acts La. Session, 1866, p 156.

No. 147. An Act relative to appeals taken since the 1st day of June, 1860.

Sec. 1 Be it enacted, &c., That all appeals which have been taken since the 1st day of June, 1860, from the District Courts of the State and which are now pending and which have not been finally determined on their merits, shall be heard and determined by preference at the places designated by existing laws for the trial of appeals from the respective parishes. Provided that the records or transcripts of such causes be filed with the clerks of the Supreme Court at the places the appeals are now made, returnable on or before the next return day after the passage of this act.

Sec. 2. Be it further enacted, That the clerks of the Supreme Court at New Orleans and Monroe, to deliver to the appellants or appellees, their agents or attorneys, on application or on the payment of all costs that have accrued, the records of all appeals from District Courts from which appeals are now made returnable, to other places, taking their receipt for same.

Sec. 3. Be it further enacted that this act shall take effect from and after its passage.

Approved March 22nd, 1866. Acts La. Session, 1866, p 278.